AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# FEDERAL REGISTER

Vol. 84 Wednesday,
No. 137 July 17, 2019

Pages 34051–34254

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: 84 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** |

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 84, No. 137

Wednesday, July 17, 2019

**Agency for Healthcare Research and Quality**
NOTICES
Meetings:
National Advisory Council for Healthcare Research and Quality, 34176–34177

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Natural Resources Conservation Service

**Alcohol, Tobacco, Firearms, and Explosives Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
FEL Out of Business Records, 34199–34200

**Animal and Plant Health Inspection Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Importation of Live Poultry, Poultry Meat, and Other Poultry Products from Specified Regions, 34117–34118
Recognition of Freedom from Citrus Longhorned Beetle and Asian Longhorned Beetle in Certain European Union Countries, 34116–34117

**Antitrust Division**
NOTICES
Changes under the National Cooperative Research and Production Act:
Advanced Media Workflow Association, Inc., 34200–34201
National Fire Protection Association, 34200
Pistoia Alliance, Inc., 34201

**Centers for Disease Control and Prevention**
NOTICES
Statement of Organization, Functions, and Delegations of Authority, 34177–34184

**Coast Guard**
RULES
Special Local Regulation:
Ohio River, Cincinnati, OH, 34061–34062

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Defense Department**
RULES
Uniformed Services University of Health Sciences, Privacy Act of 1974, 34060–34061
NOTICES
Establishment of Federal Advisory Committee:
Table Rock Lake Oversight Committee, 34167

**Energy Department**
*See* Federal Energy Regulatory Commission
*See* Western Area Power Administration
NOTICES
Energy Conservation Program:
Petition for Waiver of Anker Innovations Limited from the Department of Energy External Power Supply Test Procedure and Grant of Interim Waiver, 34167–34172
Orders:
Port Arthur LNG, LLC, Driftwood LNG LLC, Enviro Express, Inc., et al., 34172–34173

**Environmental Protection Agency**
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Colorado; Revisions to Regulation Number 4, Sale and Installation of Wood-Burning Appliances and the Use of Certain Wood Burning Appliances During High Pollution Days, 34063–34064
Change of Address for Region 1 Reports; Technical Correction, 34067–34070
Outer Continental Shelf Air Regulations:
Consistency Update for Maryland, 34065–34067
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Colorado; Regional Haze 5-Year Progress Report State Implementation Plan, 34083–34090
Montana; East Helena Lead Nonattainment Area Maintenance Plan and Redesignation Request, 34102–34106
Montana; Redesignation Request and Associated Maintenance Plan for East Helena $SO_2$ Nonattainment Area, 34090–34102
Renewable Fuel Standard Program:
Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes, 34106–34107

**Federal Aviation Administration**
RULES
Amendment of Air Traffic Service Route:
T–331; Western United States, 34051–34052
Amendment of Multiple Air Traffic Service Routes:
Vicinity of Omaha, NE, 34052–34054
Establishment of Class E Airspace:
Boulder City, NV, 34055–34056
Instrument Flight Rules Altitudes; Miscellaneous Amendments, 34057–34060
Removal of Jet Route J–147:
Eastern United States, 34054–34055
PROPOSED RULES
Amendment and Revocation of Air Traffic Service Routes:
in the Vicinity of Berlin, NH, 34077–34078
Amendment of Air Traffic Service Routes:
in the Vicinity of Glens Falls, NY, 34075–34077
in the Vicinity of Ithaca, NY, 34072–34073
Amendment of VOR Federal Airway V–37 Due to the Planned Decommissioning of Aylmer, Canada, VHF Omnidirectional Range (VOR) Navigation Aid, 34073–34075

Amendment of VOR Federal Airways V–148, V–177, and V–345:
in the Vicinity of Ely, MN, and Hayward, WI, 34078–34080
Establishment of Restricted Area:
R–7202; Guam, GU, 34082
Revocation of VHF Omnidirectional Range (VOR) Federal Airway V–369 Due to the Decommissioning of the Groesbeck, TX, VOR, 34080–34082

**Federal Communications Commission**
**PROPOSED RULES**
Modernizing the E-Rate Program for Schools and Libraries, 34107–34115

**Federal Energy Regulatory Commission**
**NOTICES**
Combined Filings, 34173–34174
Designation of Commission Staff as Non-Decisional:
Vitol Inc.; Federico Corteggiano, 34173–34174
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Ashtabula Wind I, LLC, 34175

**Federal Maritime Commission**
**NOTICES**
Agreements Filed, 34176

**Federal Motor Carrier Safety Administration**
**NOTICES**
Commercial Driver's Licenses:
Pilot Program To Allow Drivers Under 21 To Operate Commercial Motor Vehicles in Interstate Commerce; Extension of Comment Period, 34251–34252
Hours of Service of Drivers; Exemption Applications:
Small Business in Transportation Coalition, 34250–34251

**Federal Retirement Thrift Investment Board**
**NOTICES**
Meetings:
Board Member, 34176

**Federal Transit Administration**
**NOTICES**
Early Scoping, 34252–34254

**Fish and Wildlife Service**
**NOTICES**
Incidental Take Permit Application:
Douglas County Multiple Species General Conservation Plan, Douglas County, Washington, 34197–34198

**Food and Drug Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities, 34184–34186
Focus Groups About Drug Products as Used by the Food and Drug Administration, 34186–34187
Guidance on Reagents for Detection of Specific Novel Influenza A Viruses, 34190–34191
Medical Device User Fee Cover Sheet, 34189–34190
Prevention of Salmonella Enteritidis in Shell Eggs During Production; Recordkeeping and Registration Provisions, 34191–34194
Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications, 34188–34189

**Geological Survey**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
ShakeAlert Community Feedback Form, 34198–34199

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health
**NOTICES**
Single-Source Grant:
University of Northern Colorado, 34194–34195

**Homeland Security Department**
*See* Coast Guard
*See* U.S. Citizenship and Immigration Services

**Interior Department**
*See* Fish and Wildlife Service
*See* Geological Survey

**International Trade Administration**
**NOTICES**
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, 34119–34121
Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium, 34129–34131
Certain Carbon and Alloy Steel Cut-to-Length Plate from France, 34125–34127
Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy, 34121–34123
Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan, 34127–34129
Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, 34123–34125
Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan, 34131–34132

**International Trade Commission**
**NOTICES**
Investigations; Determinations, Modifications, and Rulings, etc.:
Raw Flexible Magnets from China and Taiwan, 34199

**Justice Department**
*See* Alcohol, Tobacco, Firearms, and Explosives Bureau
*See* Antitrust Division

**Management and Budget Office**
**NOTICES**
Procedures for Participating in the Appeals Process for the 2020 Census Local Update of Census Addresses, 34201–34205

**Millennium Challenge Corporation**
**NOTICES**
Requests for Nominations:
Economic Advisory Council, 34205–34206

**National Aeronautics and Space Administration**
**NOTICES**
Reporting Requirements Regarding Findings of Harassment, Sexual Harassment, Other Forms of Harassment, or Sexual Assault, 34206–34208

**National Capital Planning Commission**
NOTICES
Meetings:
Federal Workplace Element of the Comprehensive Plan for the National Capital, 34208

**National Institutes of Health**
NOTICES
Meetings:
National Center for Complementary and Integrative Health, 34196
National Institute of Environmental Health Sciences, 34195
National Institute of General Medical Sciences, 34195–34196
National Institute of Mental Health, 34195

**National Oceanic and Atmospheric Administration**
RULES
Fisheries of the Exclusive Economic Zone off Alaska:
Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area, 34070–34071
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 34163–34164
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
A Coastal Management Needs Assessment and Market Analysis for Financing Resilience, 34166–34167
Southeast Region Logbook Family of Forms, 34164–34165
Survey to Develop Estimates of Marine-Related Economic Activity in the United States, 34133–34134
Teacher at Sea Program, 34133
Meetings:
Gulf of Mexico Fishery Management Council, 34165–34166
Takes of Marine Mammals Incidental to Specified Activities:
Ferry Berth Improvements in Tongass Narrows, AK, 34134–34163

**Natural Resources Conservation Service**
NOTICES
Environmental Impact Statements; Availability, etc.:
Implement the Feral Swine Eradication and Control Pilot Program, 34118–34119

**Peace Corps**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 34208–34209

**Postal Regulatory Commission**
PROPOSED RULES
Periodic Reporting, 34082–34083

**Postal Service**
NOTICES
Product Change:
Priority Mail and First-Class Package Service Negotiated Service Agreement, 34209
Priority Mail Express Negotiated Service Agreement, 34210
Priority Mail Negotiated Service Agreement, 34209

**Securities and Exchange Commission**
NOTICES
Application:
Northern Lights Fund Trust III, et al., 34217–34219
Filing:
Program for Allocation of Regulatory Responsibilities, 34225–34230
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe EDGX Exchange, Inc., 34230–34241, 34247–34250
Cboe Exchange, Inc., 34243–34247
ICE Clear Credit, LLC, 34220–34225
ICE Clear Europe Ltd., 34241–34243
New York Stock Exchange, LLC, 34210–34217, 34219–34220

**Small Business Administration**
NOTICES
Disaster Declaration:
Texas, 34250

**State Department**
NOTICES
Culturally Significant Objects Imported for Exhibition:
In a Cloud, in a Wall, in a Chair: Six Modernists in Mexico at Midcentury, 34250

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Transit Administration

**Treasury Department**
NOTICES
Blocking or Unblocking of Persons and Properties, 34254

**U.S. Citizenship and Immigration Services**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application to Replace Permanent Resident Card, 34196–34197

**U.S.-China Economic and Security Review Commission**
NOTICES
Hearing, 34254

**Western Area Power Administration**
NOTICES
Rate Order:
Provo River Project, 34175–34176

---

**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 (4 documents) .....34051, 34052, 34054, 34055
95.....34057
**Proposed Rules:**
71 (6 documents) .....34072, 34073, 34075, 34077, 34078, 34080
73.....34082
**32 CFR**
315.....34060
**33 CFR**
100.....34061
**39 CFR**
**Proposed Rules:**
3050.....34082
**40 CFR**
52.....34063
55.....34065
59.....34067
60.....34067
61.....34067
62.....34067
63.....34067
65.....34067
82.....34067
763.....34067
**Proposed Rules:**
52 (3 documents) .....34083, 34090, 34102
80.....34106
**47 CFR**
**Proposed Rules:**
54.....34107
**50 CFR**
679.....34070

# Rules and Regulations

Federal Register

Vol. 84, No. 137

Wednesday, July 17, 2019

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–2018–0985; Airspace Docket No. 18–AWP–19]**

**RIN 2120–AA66**

## Amendment of Air Traffic Service (ATS) Route T–331; Western United States

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Area Navigation (RNAV) Route T–331 in the western United States. The modification is necessary due to the planned decommissioning of the Clovis, CA, VOR portion of the VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of affected ATS route V–23. The decommissioning has rendered portions of V–23 unusable and amending T–331 helps overcome affected portions of V–23. The Clovis, CA, VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Effective date 0901 UTC, October 10, 2019. 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 7400.11C, 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 7400.11C at NARA, call (202) 741–6030, or go to *http://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:** Kenneth Ready, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the 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 modifies the air traffic service route structure in the western United States to maintain the efficient flow of air traffic.

### History

On November 27, 2018, the FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2018–0985 in the **Federal Register** (83 FR 60786), amending RNAV route T–331 in the western United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be subsequently published in the Order.

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

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### Differences From the NPRM

Subsequent to publication of the NPRM, the FAA identified an unnecessary point along the route. PARZZ, NV WP is not required in the legal description because it is along a straight segment of the route. The deleted point does not change the direction of the flight, does not add length to any of the routes, and does not change the start or stop points of any of the routes. For these reasons the FAA is amending the legal descriptions in the best interest of the flying public.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending RNAV route T–331. The route changes are outlined below.

*T–331:* T–331 is amended from the FRAME, CA, FIX to the FONIA, ND, FIX. The FAA extended the route to the southeast by 15 miles to connect to the FRAME, CA, FIX, which is the new starting point of the RNAV route. The extension is for navigation in the low altitude structure as V–23 is being gapped in a separate rulemaking action due to the decommissioning of the Clovis, CA, VOR. Additionally, five waypoints (WP) (ESSOH, CA, WP; HIXUP, NV, WP; WAHNZ, ID,WP; SPECT, MT, WP; and TRUED, MT, WP) and one FIX (CUTVA, NV, FIX) were removed as they were unnecessary to the RNAV route description required by policy.

### 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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under Department of Transportation (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 of modifying RNAV route T–331 in the western United States qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

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

Airspace, Incorporation by reference, Navigation (air).

**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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6011 United States Area Navigation Routes.*

**T–331 FRAME, CA to FONIA, ND [Amended]**

| | | |
|---|---|---|
| FRAME, CA | FIX | (Lat. 36°36′46.74″ N, long. 119°40′25.53″ W) |
| NTELL, CA | WP | (Lat. 36°53′58.99″ N, long. 119°53′22.21″ W) |
| KARNN, CA | FIX | (Lat. 37°09′03.79″ N, long. 121°16′45.22″ W) |
| VINCO, CA | FIX | (Lat. 37°22′35.11″ N, long. 121°42′59.52″ W) |
| NORCL, CA | WP | (Lat. 37°31′02.66″ N, long. 121°43′10.60″ W) |
| MOVDD, CA | WP | (Lat. 37°39′40.88″ N, long. 121°26′53.53″ W) |
| EVETT, CA | WP | (Lat. 38°00′36.11″ N, long. 121°07′48.14″ W) |
| TIPRE, CA | WP | (Lat. 38°12′21.00″ N, long. 121°02′09.00″ W) |
| Squaw Valley, CA (SWR) | VOR/DME | (Lat. 39°10′49.16″ N, long. 120°16′10.60″ W) |
| TRUCK, CA | FIX | (Lat. 39°26′15.67″ N, long. 120°09′42.48″ W) |
| Mustang, NV (FMG) | VORTAC | (Lat. 39°31′52.60″ N, long. 119°39′21.87″ W) |
| Lovelock, NV (LLC) | VORTAC | (Lat. 40°07′30.95″ N, long. 118°34′39.34″ W) |
| Battle Mountain, NV (BAM) | VORTAC | (Lat. 40°34′08.69″ N, long. 116°55′20.12″ W) |
| TULIE, ID | WP | (Lat. 42°37′58.49″ N, long. 113°06′44.54″ W) |
| AMFAL, ID | WP | (Lat. 42°45′56.67″ N, long. 112°50′04.64″ W) |
| Pocatello, ID (PIH) | VOR/DME | (Lat. 42°52′13.38″ N, long. 112°39′08.05″ W) |
| VIPUC, ID | FIX | (Lat. 43°21′09.64″ N, long. 112°14′44.08″ W) |
| Idaho Falls, ID (IDA) | VOR/DME | (Lat. 43°31′08.42″ N, long. 112°03′50.10″ W) |
| SABAT, ID | FIX | (Lat. 44°00′59.71″ N, long. 111°39′55.04″ W) |
| Billings, MT (BIL) | VORTAC | (Lat. 45°48′30.81″ N, long. 108°37′28.73″ W) |
| EXADE, MT | FIX | (Lat. 47°35′56.78″ N, long. 104°32′40.61″ W) |
| JEKOK, ND | WP | (Lat. 47°59′31.05″ N, long. 103°27′17.51″ W) |
| FONIA, ND | FIX | (Lat. 48°15′35.07″ N, long. 103°10′37.54″ W) |

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15116 Filed 7–16–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2019–0116; Airspace Docket No. 19–AWA–1]**

**RIN 2120–AA66**

## Amendment of Multiple Air Traffic Service (ATS) Routes in the Vicinity of Omaha, NE

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

**ACTION:** Final rule, technical amendment.

**SUMMARY:** The FAA is amending three jet routes and seven VHF Omnidirectional Range (VOR) Federal airways in the vicinity of Omaha, Nebraska, to correct the state abbreviation for the Omaha VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The Omaha VORTAC is located in Mineola, Iowa; however, the state abbreviation for the location of the Omaha VORTAC included in the Air Traffic Service (ATS) routes is listed as ''NE''. Specifically, this action changes the

state abbreviation for the Omaha VORTAC listed in the jet route J–21, J–41, and J–151, and VOR Federal airway V–6, V–8, V–138, V–159, V–172, V–181, and V–307, descriptions from ''NE'' to ''IA'' to match the information contained in the FAA's aeronautical database and the charted ATS route depictions on the associated charts. No air traffic services are affected by this action.

**DATES:** Effective date 0901 UTC, August 15, 2019. 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 7400.11C, 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 7400.11C at NARA, call (202) 741–6030, or go to *http://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:** Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the 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 supports the air traffic service route structure as required to maintain the efficient flow of air traffic.

## History

After a recent review of aeronautical data, the state abbreviation published for the Omaha VORTAC in the J–21, J–41, J–151, V–6, V–8, V–138, V–159, V–172, V–181, and V–307 descriptions was determined to be in error in each ATS route. The Omaha VORTAC is actually located in Mineola, Iowa, and the state abbreviation for the NAVAID should reflect ''IA'' instead of the abbreviation ''NE'' which is in the existing descriptions. The correct reference for the Omaha VORTAC is ''Omaha, IA''. Accordingly, the FAA is amending the ATS route descriptions listed above to change the Omaha VORTAC reference from ''Omaha, NE,'' to ''Omaha, IA''.

Jet routes are published in paragraph 2004 and domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The jet routes and VOR Federal airways listed in this rule will be subsequently published in the Order.

## Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C 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 the Omaha VORTAC reference in the J–21, J–41, J–151, V–6, V–8, V–138, V–159, V–172, V–181, and V–307 descriptions. The route modifications are editorial in nature and only change the state abbreviation for the Omaha VORTAC listed in the descriptions from ''NE'' to ''IA'' to match the information contained in the FAA's aeronautical database and the charted ATS route depictions.

All radials in the route descriptions are stated relative to True north. Additionally, minor punctuation and format changes were made for clarity.

This is an administrative correction and does not affect any air traffic services or operating requirements; therefore, notice and public procedure under Title 5 U.S.C. 553(b) is unnecessary.

## 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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 airspace action of modifying three jet routes and seven VOR Federal airways by correcting the state abbreviation for the Omaha VORTAC listed in the affected ATS route descriptions has no potential to cause any significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment. Therefore, this airspace action qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500–1508, and in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures,* paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

**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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 2004 Jet Routes.*

* * * * *

**J–21**

From INT of the United States/Mexican Border and the Laredo, TX, 172° radial; Laredo; San Antonio, TX; Centex, TX; Waco, TX; Ranger, TX; Ardmore, OK; Will Rogers, OK; Wichita, KS; Omaha, IA; Gopher, MN; to Duluth, MN.

* * * * *

**J–41**

From Key West, FL; Lee County, FL; St. Petersburg, FL; Seminole, FL; Montgomery, AL; Vulcan, AL; Memphis, TN; Springfield, MO; Kansas City, MO; to Omaha, IA.

* * * * *

**J–151**

From Cross City, FL; Vulcan, AL; Farmington, MO; St. Louis, MO; Kirksville, MO; Omaha, IA; O'Neil, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Whitehall.

* * * * *

*Paragraph 2010(a) Domestic VOR Federal Airways.*

* * * * *

**V–6**

From Oakland, CA; INT Oakland 039° and Sacramento, CA, 212° radials; Sacramento; Squaw Valley, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; INT Battle Mountain 062° and Wells, NV, 256° radials; Wells; 5 miles, 40 miles, 98 MSL, 85 MSL, Lucin, UT; 43 miles, 85 MSL, Ogden, UT; 11 miles, 50 miles, 105 MSL, Fort Bridger, WY; Rock Springs, WY; 20 miles, 39 miles 95 MSL, Cherokee, WY; 39 miles, 27 miles 95 MSL, Medicine Bow, WY; INT Medicine Bow 106° and Sidney, NE, 291° radials; Sidney; North Platte, NE; Grand Island, NE; Omaha, IA; Des Moines, IA; Iowa City, IA; Davenport, IA; INT Davenport 087° and DuPage, IL, 255° radials; to DuPage. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; Gipper; to INT Gipper 092° and Litchfield, MI, 196° radials. From Clarion, PA; Philipsburg, PA; Selinsgrove, PA; Allentown, PA; Solberg, NJ; INT Solberg 107° and Yardley, PA, 068° radials; INT Yardley 068° and La Guardia, NY, 213° radials; to La Guardia.

* * * * *

**V–8**

From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA; Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Rifle, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, IA; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; to Flag City, OH. From Martinsburg, WV; to Washington, DC. The portion outside the United States has no upper limit.

* * * * *

**V–138**

From Riverton, WY; 35 miles, 80 miles 107 MSL, 16 miles 85 MSL, Medicine Bow, WY; Cheyenne, WY; Sidney, NE. From Grand Island, NE; 1,200 feet AGL INT of Grand Island 099° and Lincoln, NE, 267° radials; 1,200 feet AGL Lincoln; Omaha, IA; INT Omaha 032° and Fort Dodge, IA, 222° radials; Fort Dodge; Mason City, IA; to Waukon, IA.

* * * * *

**V–159**

From Virginia Key, FL; INT Virginia Key 344°and Treasure, FL, 178°radials; Treasure; INT Treasure 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; Vulcan, AL; Hamilton, AL; Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005°and St. Joseph, MO, 122°radials; St. Joseph; Omaha, IA; Sioux City, IA; Yankton, SD; Mitchell, SD; to Huron, SD.

* * * * *

**V–172**

From North Platte, NE; INT North Platte 073° and Wolbach, NE, 266° radials; Wolbach; Columbus, NE; Omaha, IA; INT Omaha 066° and Newton, IA, 262° radials; Newton; Cedar Rapids, IA; Polo, IL; INT Polo 088° and Du Page, IL, 293° radials; to Du Page.

* * * * *

**V–181**

From Kirksville, MO; Lamoni, IA; Omaha, IA; Norfolk, NE; Yankton, SD; Sioux Falls, SD; Watertown, SD; 34 miles, 24 miles, 34 MSL, Fargo, ND; Grand Forks, ND; Humboldt, MN; to INT Humboldt 356° radial and the United States/Canadian border.

* * * * *

**V–307**

From Harrison, AR; Neosho, MO; Oswego, KS; Chanute, KS; Emporia, KS; INT Emporia 336° and Pawnee City, NE, 194° radials; Pawnee City; Omaha, IA; INT Omaha 320° and Sioux City, IA, l74° radials; to Sioux City.

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15117 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2018–1026; Airspace Docket No. 18–AEA–20]**

**RIN 2120–AA66**

## Removal of Jet Route J–147; Eastern United States

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

**ACTION:** Final rule.

**SUMMARY:** This action removes jet route J–147 which currently extends between Beckley, WV, and Casanova, VA. This action is necessary due to the planned decommissioning of the Greenbrier, WV, VOR/DME navigation aid which provides navigation guidance for segments of the route. The Greenbrier VOR/DME is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Effective date 0901 UTC, October 10, 2019. 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 7400.11C, 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 7400.11C 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:** Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the 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 modifies the route structure in the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

## History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–1026 (83 FR 67162; December 28, 2018) to remove jet route J–147 due to the planned decommissioning of the Greenbrier, WV, VOR/DME navigation aid. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Jet routes are published in paragraph 2004 of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be subsequently removed from the Order.

## Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by removing jet route J–147 which currently extends between the Beckley, WV, VOR/DME and the Casanova, VA, VORTAC. This action is necessary due to the planned decommissioning of the Greenbrier, WV, VOR/DME which provides navigation guidance for segments of J–147. Alternative routing through the area is available by using the adjacent jet routes J–42 or J–213.

## 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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 airspace action of removing jet route J–147 between the Beckley, WV, VOR/DME and the Casanova, VA, VORTAC has no potential to cause any significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment. Therefore, this airspace action has been categorically excluded from further environmental impact review in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR parts 1500–1508, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 2004 Jet Routes.*

* * * * *

**J–147 [Remove]**

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15118 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2018–0816; Airspace Docket No. 18–AWP–7]**

**RIN 2120–AA66**

## Establishment of Class E Airspace, Boulder City, NV

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace extending upward from 700 feet above the surface at Boulder City

Muni Airport, NV. This action supports the development of Instrument Flight Rules (IFR) operations under standard instrument approach and departure procedures at the airport, for the safety and management of aircraft within the National Airspace System.

**DATES:** Effective 0901 UTC, August 15, 2019. 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 7400.11C, 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 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:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th Street, Des Moines, WA 98198–6547; telephone (206) 231–2245.

**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 establishes Class E airspace extending upward from 700 feet above the surface at Boulder City Muni Airport, NV, to support IFR operations in standard instrument approach and departure procedures at this airport.

## History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (84 FR 7839; March 5, 2019) for Docket No. FAA–2018–0816 to establish Class E extending upward from 700 feet above the surface at Boulder City Muni Airport, NV. 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 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

## Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 4.25-mile radius of Boulder City Muni Airport, NV, with a segment 1.25 miles each side of the 299° bearing from the airport extending from the 4.25-mile radius to 6 miles northwest of the airport. This airspace is necessary to support IFR operations in standard instrument approach and departure procedures at the 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, will 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 5–6.5a. 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 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

**ANM CO E5 Boulder City, NV [New]**

Boulder City Muni Airport, NV
(Lat. 35°56′51″ N, long. 114°51′41″ W)

That airspace extending upward from 700 feet above the surface within a 4.25 mile radius of Boulder City Muni Airport and that airspace 1.25 miles each side of the 299° bearing from the 4.25 mile radius to 6.00 miles from the airport.

Issued in Seattle, Washington, July 3, 2019.

**Shawn M. Kozica,**

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

[FR Doc. 2019–15114 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 95**

**[Docket No. 31264; Amdt. No. 547]**

## IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** Effective 0901 UTC, August 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

### Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on July 12, 2019.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 15, 2019.

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 547 Effective date August 15, 2019]

| From | To | MEA |
|---|---|---|
| **§ 95.6001 Victor Routes–U.S** | | |
| **§ 95.6004 VOR Federal Airway V4 Is Amended To Read in Part** | | |
| *POCKET CITY, IN VORTAC | LAMBS, IN FIX. | |
| *3600—MCA | W BND | 2500 |
| | E BND | 10000 |
| POCKET CITY, IN | VORTAC, E BND. | |
| LAMBS, IN FIX | *LOUISVILLE, KY VORTAC | **10000 |
| *10000—MCA LOUISVILLE, KY | VORTAC, W BND. | |
| **3000—GNSS MEA. | | |
| LOUISVILLE, KY VORTAC | LEXINGTON, KY VOR/DME | 2800 |
| LEXINGTON, KY VOR/DME | NEWCOMBE, KY VORTAC | 3100 |
| **§ 95.6007 VOR Federal Airway V7 Is Amended To Read in Part** | | |
| WIREGRASS, AL VORTAC | SKIPO, AL FIX | 2300 |
| SKIPO, AL FIX | *BANBI, AL FIX | **4000 |
| *4000—MCA | BANBI, AL FIX, SE BND. | |
| **1900—MOCA. | | |
| **2300—GNSS MEA. | | |
| BANBI, AL FIX | MONTGOMERY, AL VORTAC | 2400 |

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 547 Effective date August 15, 2019]

| From | To | MEA |
|---|---|---|
| MONTGOMERY, AL VORTAC | VULCAN, AL VORTAC | 3100 |
| **§ 95.6008 VOR Federal Airway V8 Is Amended To Delete** | | |
| BRIGGS, OH VOR/DME | ATWOO, OH FIX | *4000 |
| *3100—MOCA. | | |
| *3100—GNSS MEA. | | |
| ATWOO, OH FIX | BELLAIRE, OH VOR/DME | *6000 |
| *3000—MOCA. | | |
| BELLAIRE, OH VOR/DME | *GALLS, PA FIX | 3600 |
| *5000—MCA | GALLS, PA FIX, E BND. | |
| GALLS, PA FIX | GRANTSVILLE, MD VOR/DME | 5500 |
| GRANTSVILLE, MD VOR/DME | MARTINSBURG, WV VORTAC | 5500 |
| **§ 95.6012 VOR Federal Airway V12 Is Amended To Read in Part** | | |
| COLUMBIA, MO VOR/DME | STITH, MO FIX | *4000 |
| *2200—MOCA. | | |
| STITH, MO FIX | FORISTELL, MO VORTAC | *3000 |
| *2500—MOCA. | | |
| FORISTELL, MO VORTAC | TROY, IL VORTAC | *2600 |
| *2100—MOCA. | | |
| **§ 95.6018 VOR Federal Airway V18 Is Amended To Delete** | | |
| GUTHRIE, TX VORTAC | BEKLE, TX FIX. | |
| *3400—MOCA | NW BND | *6000 |
| | SE BND | *8000 |
| BEKLE, TX FIX | MILLSAP, TX VORTAC | *8000 |
| *3500—MOCA. | | |
| **§ 95.6078 VOR Federal Airway V78 Is Amended To Delete** | | |
| ESCANABA, MI VOR/DME | SCHOOLCRAFT COUNTY, MI VOR/DME | 2500 |
| SCHOOLCRAFT COUNTY, MI VOR/DME | PELLSTON, MI VORTAC | 2600 |
| **§ 95.6092 VOR Federal Airway V92 Is Amended To Delete** | | |
| BELLAIRE, OH VOR/DME | *GALLS, PA FIX | 3600 |
| *5000—MCA | GALLS, PA FIX, E BND. | |
| GALLS, PA FIX | GRANTSVILLE, MD VOR/DME | 5500 |
| GRANTSVILLE, MD VOR/DME | KEYER, WV FIX | 5500 |
| KEYER, WV FIX | ARMEL, VA VOR/DME | 5000 |
| **§ 95.6102 VOR Federal Airway V102 Is Amended To Delete** | | |
| LUBBOCK, TX VORTAC | GUTHRIE, TX VORTAC | 5000 |
| GUTHRIE, TX VORTAC | *SNEED, TX FIX | **3700 |
| *4000—MRA. | | |
| **3000—MOCA. | | |
| *SNEED, TX FIX | **ELECT, TX FIX | 2700 |
| *4000—MRA. | | |
| **3500—MRA. | | |
| *ELECT, TX FIX | WICHITA FALLS, TX VORTAC | 2700 |
| *3500—MRA. | | |
| **§ 95.6184 VOR Federal Airway V184 Is Amended To Read in Part** | | |
| DELRO, PA FIX | *MODENA, PA VORTAC | **10000 |
| *10000—MCA | MODENA, PA VORTAC, W BND. | |
| **4000—GNSS MEA. | | |
| **95.6214 VOR Federal Airway V214 Is Amended To Delete** | | |
| BELLAIRE, OH VOR/DME | GALLS, PA FIX | 3600 |
| *5000—MCA | GALLS, PA FIX, E BND. | |
| GALLS, PA FIX | GRANTSVILLE, MD VOR/DME | 5500 |
| GRANTSVILLE, MD VOR/DME | MARTINSBURG, WV VORTAC | 5500 |
| **§ 95.6224 VOR Federal Airway V224 Is Amended To Delete** | | |
| SAWYER, MI VOR/DME | SCHOOLCRAFT COUNTY, MI VOR/DME | *3500 |

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 547 Effective date August 15, 2019]

| From | To | MEA |
|---|---|---|
| *2600—MOCA. | | |
| **§ 95.6275 VOR Federal Airway V275 Is Amended To Read in Part** | | |
| CINCINNATI, KY VORTAC | DAYTON, OH VOR/DME | 3000 |
| **§ 95.6278 VOR Federal Airway V278 Is Amended To Delete** | | |
| PLAINVIEW, TX VOR/DME | GUTHRIE, TX VORTAC | *5100 |
| *4600—MOCA. | | |
| GUTHRIE, TX VORTAC | NIFDE, TX WP | *4500 |
| *3300—MOCA. | | |
| NIFDE, TX WP | BOWIE, TX VORTAC | *4500 |
| *2600—MOCA. | | |
| *3300—GNSS MEA. | | |
| **§ 95.6295 VOR Federal Airway V295 Is Amended To Read in Part** | | |
| VIRGINIA KEY, FL VOR/DME | HEATT, FL FIX | *5000 |
| *2100—MOCA. | | |
| HEATT, FL FIX | *BLUFI, FL FIX | **6000 |
| *6000—MCA | BLUFI, FL FIX, S BND. | |
| **2000—MOCA. | | |
| BLUFI, FL FIX | STOOP, FL FIX | *5000 |
| *2000—MOCA. | | |
| **§ 95.6306 VOR Federal Airway V306 Is Amended To Read in Part** | | |
| JUNCTION, TX VORTAC | *AMUSE, TX FIX | **7000 |
| *5000—MCA | AMUSE, TX FIX, E BND. | |
| **5000—MOCA. | | |
| AMUSE, TX FIX | CENTEX, TX VORTAC | *3300 |
| *2900—MOCA. | | |
| CENTEX, TX VORTAC | NAVASOTA, TX VOR/DME | 2400 |
| ZMSKL, TX FIX | CLEEP, TX FIX | *5000 |
| *2400—MOCA. | | |
| CLEEP, TX FIX | DAISETTA, TX VORTAC | 3100 |
| DAISETTA, TX VORTAC | KUUPR, TX FIX. | |
| | W BND | 2300 |
| | E BND | 2800 |
| KUUPR, TX FIX | OFERS, LA FIX | 2800 |
| **95.6352 VOR Federal Airway V352 Is Amended To Delete** | | |
| U.S. CANADIAN BORDER | *PATTA, ME FIX | 6300 |
| *10000—MRA. | | |
| HOULTON, ME VOR/DME | U.S. CANADIAN BORDER | 2000 |
| **§ 95.6404 VOR Federal Airway V404 Is Amended To Read in Part** | | |
| CHILDRESS, TX VORTAC | *SNEED, TX FIX | 4700 |
| *5000—MRA. | | |
| *SNEED, TX FIX | WICHITA FALLS, TX VORTAC. | |
| | E BND | 3000 |
| | W BND | 4700 |
| *5000—MRA. | | |
| **§ 95.6430 VOR Federal Airway V430 Is Amended To Read in Part** | | |
| WILLISTON, ND VOR/DME | MINOT, ND VORTAC | *6000 |
| *3900—MOCA. | | |
| **§ 95.6438 VOR Federal Airway V438 Is Amended To Delete** | | |
| GRANTSVILLE, MD VOR/DME | FLINT, MD FIX | 6000 |
| FLINT, MD FIX | TOMAC, WV FIX. | |
| | E BND | 4000 |
| | W BND | 6000 |
| TOMAC, WV FIX | HAGERSTOWN, MD VOR | 4000 |

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 547 Effective date August 15, 2019]

| From | To | MEA |
|---|---|---|
| **§ 95.6474 VOR Federal Airway V474 Is Amended To Read in Part** | | |
| DELRO, PA FIX<br>*10000—MCA<br>**4000—GNSS MEA. | *MODENA, PA VORTAC<br>MODENA, PA VORTAC, W BND. | **10000 |
| **§ 95.6491 VOR Federal Airway V491 Is Amended To Read in Part** | | |
| DICKINSON, ND VORTAC<br>*4400—MOCA. | MINOT, ND VORDME | *6000 |
| **§ 95.6521 VOR Federal Airway V521 Is Amended To Read in Part** | | |
| WIREGRASS, AL VORTAC<br>SKIPO, AL FIX<br>*4000—MCA<br>**1900—MOCA.<br>**2300—GNSS MEA.<br>BANBI, AL FIX MONTGOMERY, AL VORTAC 2400. | SKIPO, AL FIX<br>*BANBI, AL FIX<br>BANBI, AL FIX, SE BND. | 2300<br>**4000 |
| **§ 95.6565 VOR Federal Airway V565 Is Amended To Read in Part** | | |
| LLANO, TX VORTAC<br>AMUSE, TX FIX<br>*2900—MOCA.<br>CENTEX, TX VORTAC | AMUSE, TX FIX<br>CENTEX, TX VORTAC<br>COLLEGE STATION, TX VORTAC | 3500<br>3300<br>2400 |

| Airway Segment | | Changeover Points | |
|---|---|---|---|
| From | To | Distance | From |
| **§ 95.8005 Jet Routes Changeover Points J153 Is Amended To Add Changeover Point** | | | |
| ROME, OR VOR/DME | BAKER CITY, OR VOR/DME | 120 | ROME. |

[FR Doc. 2019–15238 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 315

**[Docket ID: DOD–2019–OS–0042]**

**RIN 0790–AK61**

### Uniformed Services University of Health Sciences, Privacy Act of 1974

**AGENCY:** Uniformed Services University of Health Sciences (USUHS), Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DoD's regulation concerning the Uniformed Services University of Health Sciences Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide Privacy Program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

**DATES:** This rule is effective on July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Brian Rimm, 301–295–1054.

**SUPPLEMENTARY INFORMATION:** DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The USUHS Privacy Act Program regulation at 32 CFR part 315, last updated on November 14, 1991 (56 FR 57802), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. To the extent that USUHS internal guidance concerning the implementation of the Privacy Act within USUHS is necessary, it will continue to be published in Instruction 7751, ''University Privacy Program,'' January 28, 2018 (available at *https://www.usuhs.edu/oac/privacyact*).

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

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 315**

Privacy.

### PART 315—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 315 is removed.

Dated: July 11, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–15141 Filed 7–16–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2019–0448]**

**RIN 1625–AA08**

## Special Local Regulation, Ohio River, Cincinnati, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the Ohio River from mile 465.0 to mile 470.0 extending from bank to bank, on July 15, 2019. The special local regulation is necessary to provide for the safety of life on these navigable waters near Cincinnati, Ohio, during the BB Riverboat boat race. Entry of persons or vessels into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective from 3 p.m. through 5 p.m. on July 15, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0448 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Matthew Roberts, Marine Safety Detachment Cincinnati, OH; telephone 513–921–9033, *matthew.d.roberts@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This action is necessary to ensure the safety of life during the BB Riverboat race. It is impracticable to publish an NPRM because the Coast Guard must establish this special local regulation by July 15, 2019 and lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public interest in ensuring the safety of spectators and vessels during the boat race because immediate action is necessary to prevent possible loss of life and property. Broadcast Notices to Mariners (BNM) and sharing information with the waterway users will update mariners of the restrictions, requirements and enforcement times during this temporary situation.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the BB Riverboat race from 3 p.m. through 5 p.m. on July 15, 2019 will be a safety concern for all navigable waters of the Ohio River extending from mile marker 465.0 to mile 470.0 extending from bank to bank. The purpose of this rule is to ensure safety of life on the navigable waters in the regulated area before, during, and after the BB Riverboat race.

### IV. Discussion of the Rule

The rule establishes a special local regulation from 3 p.m. through 5 p.m. on July 15, 2019 on the Ohio River in Cincinnati, Ohio from mile 465.0 to mile 470.0 extending from bank to bank. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled event. No vessel or person would be permitted to enter the area without obtaining permission from the COTP or a designated representative.

Deviation requests will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1–800–253–7475 or can be reached by VHF–FM channel 16. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the special local regulation. The special local regulation will only be in effect for two hours and covers an area of the waterway stretching five miles. The Coast Guard expects minimum adverse impact to mariners from the special local regulation activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP or a designated representative to transit the temporary area.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of

vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a special local regulation on the Ohio River in Cincinnati, OH from mile 465.0 to mile 470.0 from 3:00 p.m. to 5:00 p.m. on July 15, 2019 extending from bank to bank. It is categorically excluded from further review under paragraph L[61] in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

*G. Protest Activities*

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

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

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

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

## PART 100—SPECIAL LOCAL REGULATIONS/REGATTAS AND MARINE PARADES

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

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T08–0448 to read as follows:

**§ 100.T08–0448 Special Local Regulation; Ohio River, Cincinnati, OH.**

(a) *Location.* The Ohio River, from mile 465.0 to 470.0, extending bank to bank.

(b) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated personnel. Moreover, persons or vessels desiring to enter into or pass through the special local regulated area must request permission from the COTP Sector Ohio Valley or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to deviate from the special local regulated area requirements as well as enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP Sector Ohio Valley or a designated representative.

(c) *Enforcement period.* This special local regulation will be enforced from 3 p.m. through 5 p.m. on July 15, 2019.

(d) *Informational Broadcasts.* The COTP Sector Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation, as well as any changes in the dates and times of enforcement.

**A.M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2019–14994 Filed 7–15–19; 12:30 pm]

BILLING CODE 9110–04–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R08–OAR–2019–0054; FRL–9995–93–Region 8]**

# Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 4, Sale and Installation of Wood-Burning Appliances and the Use of Certain Wood Burning Appliances During High Pollution Days

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions to Colorado Regulation Number 4 (Reg. No. 4), ''Sale and Installation of Wood-Burning Appliances and the Use of Certain Wood Burning Appliances During High Pollution Days,'' submitted by the State on May 2, 2016 and May 14, 2018. The revisions update definitions, emission standards, certification and labeling requirements, and citation references to maintain consistency with the EPA's 2015 Standards of Performance for New Residential Wood Heaters. The EPA is taking this action in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on August 16, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0054. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6563, *fulton.abby@epa.gov.*

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

## I. Background

The background for this action is discussed in detail in our April 12, 2019 proposal (84 FR 14903). In that document we proposed to approve the SIP submittals from the State of Colorado for Reg. No. 4 submitted on May 2, 2016 and May 14, 2018. The revisions update definitions, emission standards, certification and labeling requirements, and citation references to maintain consistency with the EPA's 2015 Standards of Performance for New Residential Wood Heaters (New Source Performance Standards 40 CFR part 60, subpart AAA).

We received one comment in support of our proposed action.

## II. Final Action

We are approving the SIP submittals from the State of Colorado for Reg. No. 4 submitted on May 14, 2018 and May 2, 2016 (except for provisions that have been superseded by the later submission, as to which we are not taking any action).[1] We proposed these actions in accordance with section 110 and part D of the CAA.

## III. Incorporation by Reference

In this document, 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 Colorado Reg. No. 4 pertaining to the regulation of wood stoves as discussed in section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

## 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);
- 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, 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

[1] On November 21, 2018, the EPA proposed amendments to the revised 2015 NSPS, seeking comments on allowing retailers additional time to sell existing inventory of wood stoves and on whether pellet fuel requirements should be revised (83 FR 61574). In addition, the EPA issued an Advanced Notice of Proposed Rulemaking to seek comments on test methods and the 2020 compliance deadline for tighter emission limits for forced-air furnaces, hydronic heaters and wood stoves in the revised 2015 NSPS AAA (83 FR 61585). If new federal requirements are finalized through these actions, Colorado may update Reg. No. 4 through future SIP revisions to align Reg. No. 4 with federal requirements.

[2] 62 FR 27968 (May 22, 1997).

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 September 16, 2019. 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, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 11, 2019.

**Gregory Sopkin,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart G—Colorado

■ 2. In § 52.320, in the table in paragraph (c), section 5 CCR 1001–06 is revised to read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c) * * *

| Title | State effective date | EPA effective date | Final rule/citation date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **5 CCR 1001–06, Regulation Number 4, Sale and Installation of Wood-Burning Appliances and Use of Certain Wood Burning Appliances During High Pollution Days** | | | | |
| I. Definitions | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| II. Limitation on the Sale and Installation of Wood-Burning Stoves. | 4/30/2017 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| III. Approval Procedure for Pellet Stoves. | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| V. Enforcement | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| VI. List of Approved-Wood Burning Appliances. | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| VII. High Pollution Days | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| VIII. Requirements for Installation of Fireplaces. | 4/30/2017 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| IX. Implementation of Local Controls. | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| X. References | 1/14/2016 | 8/16/2019 | [Insert **Federal Register** citation] 7/17/2019. | Previous SIP approval 04/17/97. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2019–15106 Filed 7–16–19; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 55**

**[EPA–R03–OAR–2014–0568; FRL–9995–39-Region 3]**

## Outer Continental Shelf Air Regulations; Consistency Update for Maryland

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The State of Maryland's requirements discussed in this document, and listed in the appendix to the Federal OCS air regulations, are approved for incorporation into the compilation of state provisions that is incorporated by reference.

**DATES:** This rule is effective on August 16, 2019. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of August 16, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0568. 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, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov, o*r please contact the person identified in the ''For Further Information Contact'' section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Amy Johansen, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2156. Mrs. Johansen can also be reached via electronic mail at *johansen.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 9, 2019 (84 FR 14078), EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve various Maryland air pollution control requirements for inclusion in the updated compilation of ''State of Maryland Requirements Applicable to OCS Sources,'' dated December 6, 2018, which is incorporated by reference into 40 CFR part 55. EPA did not receive any comments on the NPRM.

Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken to update 40 CFR part 55, in accordance with the requirements at 40 CFR part 55.12, since the last consistency update occurred more than one year ago.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[1] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards. Other specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the April 9, 2019 NPRM and will not be restated here.

### II. Final Action

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the State of Maryland will be the COA. The rules that EPA is taking final action to incorporate are applicable provisions of the Code of Maryland Regulations (COMAR), as amended through December 6, 2018. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into ''State of Maryland Requirements Applicable to OCS Sources,'' dated May 6, 2016, which was incorporated by reference into 40 CFR part 55. *See* 81 FR 62393 (September 9, 2016).

### III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ''State of Maryland Requirements Applicable to OCS Sources,'' dated December 6, 2018, which is the compilation of provisions of the COMAR described in the amendments to 40 CFR part 55 set forth below. EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25

[1] Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. 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 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 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule incorporating by reference sections of COMAR, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the state, and EPA notes that it does not impose substantial direct costs on tribal governments or preemptive tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.[2] The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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 September 16, 2019. 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).)

EPA is incorporating the rules potentially applicable to sources for which the State of Maryland is the COA. The rules that EPA is incorporating are applicable provisions of COMAR.

**List of Subjects in 40 CFR Part 55**

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

Dated: June 7, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.**

* * * * *

(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, December 6, 2018.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Maryland'' to read as follows:

**Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State**

* * * * *

Maryland

(a) * * *

(1) The following State of Maryland requirements are applicable to OCS Sources, December 6, 2018, State of Maryland–Department of the Environment.

The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01—General Administrative Provisions (Effective as of December 6, 2018)

[2] OMB's approval of the ICR can be viewed at *www.reginfo.gov.*

COMAR 26.11.02—Permits, Approvals, and Registrations (Effective as of February 12, 2018)
COMAR 26.11.03—Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)
COMAR 26.11.05—Air Pollution Episode System (Effective as of November 12, 2010)
COMAR 26.11.06—General Emission Standards, Prohibitions, and Restrictions (Effective as of July 02, 2013)
COMAR 26.11.07—Open Fires (Effective as of November 12, 2010)
COMAR 26.11.08—Control of Incinerators (Effective as of December 6, 2018)
COMAR 26.11.09—Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of December 6, 2018)
COMAR 26.11.13—Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)
COMAR 26.11.15—Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.16—Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.17—Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of April 09, 2018)
COMAR 26.11.19—Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015)
COMAR 26.11.20—Mobile Sources (Effective as of November 12, 2010)
COMAR 26.11.26—Conformity (Effective as of November 12, 2010)
COMAR 26.11.35—Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)
COMAR 26.11.36—Distributed Generation (Effective as of February 12, 2018)
COMAR 26.11.39—Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

* * * * *

[FR Doc. 2019–14986 Filed 7–16–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 59, 60, 61, 62, 63, 65, 82, and 763

**[FRL–9995–50–Region 1]**

### Change of Address for Region 1 Reports; Technical Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending its regulations to reflect a change in address for submitting certain reports to EPA's Region 1 office and to correct the addresses for submitting certain air program reports to the EPA Region 1 states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont once the state is delegated. This action is editorial in nature and is intended to provide accuracy and clarity to the agency's regulations.

**DATES:** Effective August 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Susan Lancey, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1 Office, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, telephone number 617–918–1656, *lancey.susan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

The EPA is amending its regulations in 40 CFR parts 59, 60, 61, 62, 63, 65, 82 and 763 to reflect a change in the mailing address for EPA's Region 1 office. The EPA is also amending its regulations in 40 CFR parts 60, 61, and 65 to reflect a change in the mailing addresses for the Region 1 states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. This technical amendment merely updates and corrects the addresses for mailing certain reports and other information to EPA Region 1's office and to the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont once delegated a particular standard in 40 CFR parts 60, 61, and 65. Consequently, EPA has determined that this rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the mailing address has changed for Region 1 reports submitted under 40 CFR parts 59, 60, 61, 62, 63, 65, 82 and 763 and since the Region 1 state mailing addresses have changed for reports submitted once the state is delegated under 40 CFR parts 60, 61, and 65. Notice in the CFR benefits the public by updating citations.

### II. Statutory and Executive Order Reviews

This final rule implements technical amendments to 40 CFR parts 59, 60, 61, 62, 63, 65, 82, and 763 to reflect a change in address for reports submitted to EPA's Region 1 office and implements technical amendments to 40 CFR parts 60, 61, and 65 to reflect a change in addresses for the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont upon delegation of authority. It does not otherwise impose or amend any requirements. 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 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);

In addition, it does not involve any technical standards that require the Agency' consideration of voluntary consensus standards pursuant to Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note). It also 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). And it does not have Tribal implications because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes 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 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**. 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.

**List of Subjects**

*Part 59*

Environmental protection, Air pollution control, Confidential business information, Labeling, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

*Parts 60, 61, 62, 63, and 65*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

*Part 82*

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Government procurement, Imports, Labeling, Reporting and recordkeeping requirements.

*Part 763*

Environmental protection, Administrative practice and procedure, Asbestos, Confidential business information, Hazardous substances, Imports, Intergovernmental relationships, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: June 19, 2019.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

Title 40 CFR parts 59, 60, 61, 62, 63, 65, 82, and 763 are amended as follows:

## PART 59—NATIONAL VOLATILE ORGANIC COMPOUND EMISSION STANDARDS FOR CONSUMER AND COMMERCIAL PRODUCTS

■ 1. The authority citation for part 59 continues to read as follow:

**Authority:** 42 U.S.C 7414 and 7511b(e).

### Subpart B—National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

■ 2. Section 59.107 is amended by revising the Region I address to read as follows:

**§ 59.107 Addresses of EPA Regional Offices.**

* * * * *

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

### Subpart C—National Volatile Organic Compound Emission Standards for Consumer Products

■ 3. Section 59.210 is amended by revising the Region I address to read as follows:

**§ 59.210 Addresses of EPA Regional Offices.**

* * * * *

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

### Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings

■ 4. Section 59.409(a) is amended by revising the Region I address to read as follows:

**§ 59.409 Addresses of EPA Offices.**

(a) * * *

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

### Subpart E—National Volatile Organic Compound Emission Standards for Aerosol Coatings

■ 5. Section 59.512 is amended by revising the Region I address to read as follows:

**§ 59.512 Addresses of EPA regional offices.**

* * * * *

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

## PART 60—NEW SOURCE PERFORMANCE STANDARDS

■ 6. The authority citation for part 60 continues to read as follows:

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

### Subpart A—General Provisions

■ 7. In § 60.4, amend paragraph (a) by revising the Region I address and by revising paragraphs (b)(8), (b)(21), (b)(23), (b)(31), (b)(41) and (b)(47), to read as follows:

**§ 60.4 Address.**

(a) * * *

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

(b) * * *

(8) State of Connecticut, Compliance Analysis and Coordination Unit, Bureau of Air Management, Department of Energy and Environmental Protection, 79 Elm Street, 5th Floor, Hartford, CT 06106–5127.

* * * * *

(21) State of Maine, Maine Department of Environmental Protection, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333–0017.

* * * * *

(23) Commonwealth of Massachusetts, Massachusetts Department of Environmental Protection, Division of Air and Climate Programs, One Winter Street, Boston, MA 02108.

* * * * *

(31) State of New Hampshire, New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

* * * * *

(41) State of Rhode Island, Rhode Island Department of Environmental Management, Office of Air Resources,

235 Promenade Street, Providence, RI 02908.

* * * * *

(47) State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, Air Quality and Climate Division, Davis 2, One National Life Drive, Montpelier, VT 05620–3802.

* * * * *

## PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 8. The authority citation for part 61 continues to read as follows:

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

### Subpart A—General Provisions

■ 9. In § 61.04, amend paragraph (a) by revising the Region I address, and by revising paragraphs (b)(8), (b)(21), (b)(23), (b)(31), (b)(41) and (b)(47), to read as follows:

**§ 61.04 Address.**

(a) * * *

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

(b) * * *

(8) State of Connecticut: Compliance Analysis and Coordination Unit, Bureau of Air Management, Department of Energy and Environmental Protection, 79 Elm Street, 5th Floor, Hartford, CT 06106–5127.

* * * * *

(21) State of Maine: Maine Department of Environmental Protection, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333–0017.

* * * * *

(23) Commonwealth of Massachusetts, Massachusetts Department of Environmental Protection, Division of Air and Climate Programs, One Winter Street, Boston, MA 02108.

* * * * *

(31) State of New Hampshire, New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

* * * * *

(41) State of Rhode Island, Rhode Island Department of Environmental Management, Office of Air Resources, 235 Promenade Street, Providence, RI 02908.

* * * * *

(47) State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, Air Quality and Climate Division, Davis 2, One National Life Drive, Montpelier, VT 05620–3802.

* * * * *

## PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 10. The authority citation for part 62 continues to read as follows:

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

### Subpart A—General Provisions

■ 11. Section 62.10 is amended by adding a heading to the table and revising the first entry for the Region I address in the table to read as follows:

**§ 62.10 Submission to Administrator.**

* * * * *

TABLE 1 TO § 62.10

| Region and jurisdiction covered | Address |
|---|---|
| I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. | Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk. |
| * * * * * * * | |

## PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 12. The authority citation for part 63 continues to read as follows:

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

### Subpart A—General Provisions

■ 13. Section 63.13(a) is amended by revising the address for Region I to read as follows:

**§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.**

(a)* * *

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

## PART 65—CONSOLIDATED FEDERAL AIR RULE

■ 14. The authority citation for part 65 continues to read as follows:

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

### Subpart A—General Provisions

■ 15. In § 65.14, amend paragraph (a) by revising the Region I address and by revising paragraphs (b)(7), (b)19), (b)(21), (b)(29), (b)(39) and (b)(45), to read as follows:

**§ 65.14 Addresses.**

(a)* * *

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.

* * * * *

(b) * * *

(7) *Connecticut.* Compliance Analysis and Coordination Unit, Bureau of Air Management, Department of Energy and Environmental Protection, 79 Elm Street, 5th Floor, Hartford, CT 06106–5127.

* * * * *

(19) *Maine.* Maine Department of Environmental Protection, Bureau of Air Quality, 17 State House Station, Augusta, ME 04333–0017.

* * * * *

(21) *Massachusetts.* Massachusetts Department of Environmental Protection, Division of Air and Climate Programs, One Winter Street, Boston, MA 02108.

* * * * *

(29) *New Hampshire.* New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

* * * * *

(39) *Rhode Island.* Rhode Island Department of Environmental Management, Office of Air Resources, 235 Promenade Street, Providence, RI 02908.

* * * * *

(45) *Vermont.* Agency of Natural Resources, Department of Environmental Conservation, Air Quality and Climate Division, Davis 2, One National Life Drive, Montpelier, VT 05620–3802.

* * * * *

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 16. The authority for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

### Subpart B—Servicing of Motor Vehicle Air Conditioners

■ 17. Section 82.42 is amended by revising paragraph (a)(1)(iii)(A) to read as follows:

**§ 82.42 Certification, recordkeeping and public notification requirements.**

(a) * * *

(1) * * *

(iii) * * *

(A) Owners or lessees of recycling or recovery equipment having their places of business in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont must send their certifications to: CAA section 609 Enforcement Contact; EPA Region I; Mail Code 04–2; 5 Post Office Square—Suite 100, Boston, MA 02109–3912.

* * * * *

## PART 763—ASBESTOS-CONTAINING MATERIAL IN SCHOOLS

■ 18. The authority for part 763 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607(c), 2643, and 2646.

### Subpart E—Asbestos Containing Materials in Schools

■ 19. Appendix C to subpart E is amended by revising the address for Region I under II.C.3 to read as follows:

**Appendix C to Subpart E of Part 763—Asbestos Model Accreditation Plan**

* * * * *

II. * * *

C. * * *

3. * * *

EPA, Region 1, Asbestos Coordinator, 5 Post Office Square—Suite 100 (05–4), Boston, MA 02109–3912, (617) 918–1563.

* * * * *

■ 20. Appendix D to subpart E is amended by revising the address for Region I address to read as follows:

**Appendix D to Subpart E of Part 763—Transport and Disposal of Asbestos Waste**

* * * * *

**Region I**

Asbestos NESHAPs Contact, Enforcement and Compliance Assurance Division, USEPA, Region I, 5 Post Office Square—Suite 100 (05–4), Boston, MA 02109–3912, (617) 918–1739.

* * * * *

[FR Doc. 2019–13579 Filed 7–16–19; 8:45 am]

BILLING CODE 6560–50–P

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 180713633–9174–02]**

**RIN 0648–XG086**

## Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish 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; reallocation.

**SUMMARY:** NMFS is exchanging allocations of Amendment 80 cooperative quota (CQ) for Amendment 80 acceptable biological catch (ABC) reserves. This action is necessary to allow the 2019 total allowable catch of flathead sole, rock sole, and yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

**DATES:** Effective July 17, 2019, through December 31, 2019.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) 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 2019 flathead sole, rock sole, and yellowfin sole Amendment 80 allocations of the total allowable catch (TAC) specified in the BSAI are 9,949 metric tons (mt), 36,060 mt, and 115,171 mt, respectively, as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019). The 2019 flathead sole, rock sole, and yellowfin sole Amendment 80 ABC reserves are 46,548 mt, 64,117 mt, and 97,516 mt, respectively, as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

The Alaska Seafood Cooperative has requested that NMFS exchange 5,200 mt of rock sole Amendment 80 allocation of the TAC for 3,200 mt of flathead sole and 2,000 mt of yellowfin sole Amendment 80 ABC reserves under § 679.91(i). Therefore, in accordance with § 679.91(i), NMFS exchanges 5,200 mt of rock sole Amendment 80 allocation of the TAC for 3,200 mt of flathead sole and 2,000 mt of yellowfin sole Amendment 80 ABC reserves in the BSAI. This action also decreases and increases the TACs and Amendment 80 ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and as revised (84 FR 24399, May 28, 2019) are further revised as follows:

TABLE 11—FINAL 2019 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

| Sector | Pacific ocean perch | | | Flathead sole | Rock sole | Yellowfin sole |
|---|---|---|---|---|---|---|
| | Eastern Aleutian district | Central Aleutian district | Western Aleutian district | BSAI | BSAI | BSAI |
| TAC | 11,009 | 8,385 | 10,000 | 17,700 | 42,300 | 155,600 |
| CDQ | 1,178 | 897 | 1,070 | 1,552 | 5,440 | 16,078 |
| ICA | 100 | 60 | 10 | 3,000 | 6,000 | 4,000 |
| BSAI trawl limited access | 973 | 743 | 178 | ..... | ..... | 18,351 |
| Amendment 80 | 8,758 | 6,685 | 8,742 | 13,149 | 30,860 | 117,171 |

**Note:** Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2019 AND 2020 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

| Sector | 2019 Flathead sole | 2019 Rock sole | 2019 Yellowfin sole | 2020 [1] Flathead sole | 2020 [1] Rock sole | 2020 [1] Yellowfin sole |
|---|---|---|---|---|---|---|
| ABC | 66,625 | 118,900 | 263,200 | 68,448 | 143,700 | 257,800 |
| TAC | 17,700 | 42,300 | 155,600 | 14,500 | 57,100 | 166,425 |
| ABC surplus | 48,925 | 76,600 | 107,600 | 53,948 | 86,600 | 91,375 |
| ABC reserve | 48,925 | 76,600 | 107,600 | 53,948 | 86,600 | 91,375 |
| CDQ ABC reserve | 5,577 | 7,283 | 12,084 | 5,772 | 9,266 | 9,777 |
| Amendment 80 ABC reserve | 43,348 | 69,317 | 95,516 | 48,176 | 77,334 | 81,598 |

[1] The 2020 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2019.

## 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 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 flatfish exchange by the Alaska Seafood cooperative the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 3, 2019.

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 12, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–15194 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 84, No. 137
Wednesday, July 17, 2019

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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2019–0473; Airspace Docket No. 19–AEA–1]**

**RIN 2120–AA66**

## Proposed Amendment of Air Traffic Service (ATS) Routes in the Vicinity of Ithaca, NY

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

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

**SUMMARY:** This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–423, and V–428 due to the planned decommissioning of the Ithaca, NY, VOR/DME navigation aid which provides navigation guidance for segments of the routes. The Ithaca VOR/DME is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before September 3, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0473; Airspace Docket No. 19–AEA–1 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11C, 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 7400.11C at NARA, call (202) 741–6030, or go to *http://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:** Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the northeastern United States to maintain the efficient flow of air traffic.

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0473; Airspace Docket No. 19–AEA–1 and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0473; Airspace Docket No. 19–AEA–1''. The postcard will be date/time stamped and returned to the commenter.

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

### Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend VOR Federal airways V–423 and V–428 due to the planned decommissioning of the Ithaca, NY, VOR/DME. The proposed changes are described below.

*V–423:* V–423 currently extends between the Williamsport, PA, VOR/DME, and the Syracuse, NY, VORTAC. The FAA proposes to remove the route segments between the Binghamton, NY, VOR/DME and Syracuse, NY. As amended, V–423 would extend between Williamsport, PA, and Binghamton, NY. As an alternative, airway V–29 could be used for flights between Binghamton and Syracuse.

*V–428:* V–428 currently extends between the Elmira, NY, VOR/DME and the Utica, NY, VORTAC. The FAA proposes to remove the segments of V–428 between Elmira, NY, and the Georgetown, NY, VORTAC. As amended, V–322 would extend between Georgetown, NY, and Utica, NY.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–423 [Amended]**

From Williamsport, PA; to Binghamton, NY.

**V–428 [Amended]**

From Georgetown, NY; to Utica, NY.

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15113 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2019–0538; Airspace Docket No. 19–AEA–4]**

**RIN 2120–AA66**

## Proposed Amendment of VOR Federal Airway V–37 Due to the Planned Decommissioning of Aylmer, Canada, VHF Omnidirectional Range (VOR) Navigation Aid

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

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

**SUMMARY:** This action proposes to amend VHF Omnidirectional Range (VOR) Federal airway V–37 in the northeast United States to reflect changes being made in Canadian airspace. The modification is necessary due to the planned decommissioning of the Aylmer, Canada, VOR navigation aid (NAVAID), which provides navigation guidance for portions of V–37. The Aylmer VOR is being decommissioned as part of NAV CANADA's NAVAID Modernization Program.

**DATES:** Comments must be received on or before September 3, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0538; Airspace Docket No. 19–AEA–4 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11C, 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 7400.11C 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:** Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

**Comments Invited**

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0538; Airspace Docket No. 19–AEA–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0538; Airspace Docket No. 19–AEA–4.'' The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRMs**

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

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

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

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**Background**

NAV CANADA, which operates Canada's civil air navigation service, is continuing to implement various changes to Canada's instrument flight rules (IFR) navigation infrastructure as part of their NAVAID Modernization Program to enhance the efficiency of operations by taking advantage of performance based navigation and modern avionic capabilities. The changes being implemented by NAV CANADA occasionally affect parts of U.S. VOR Federal airways that extend into Canadian airspace. As a result, changes are required to the V–37 description to mirror changes that have been made previously and that are planned to be made on the Canadian side of the border.

In 2014, NAV CANADA published their Aeronautical Information Regulation And Control (AIRAC) Canada update, AIRAC Issue 34, effective November 13, 2014, which revoked the V–37 airway segment from the JARVS fix to the Toronto, ON, Canada, VOR/DME within Canadian airspace. Then, in 2015, NAV CANADA published the Canada Aeronautical Charts Supplement, Volume 19/Number 5, effective August 20, 2015, which reflected the FOWEL and JARVS fixes on V–37 being composed using radials from the Aylmer VOR. Unfortunately, the FAA overlooked accomplishing Part 71 rulemaking actions to incorporate these two amendment activities at the time.

Today, NAV CANADA is planning the decommissioning of the Aylmer, Canada, VOR in March 2020 as one of the VORs identified in their NAVAID Modernization Program. With the planned decommissioning of the Aylmer VOR, the ground-based NAVAID coverage in the area is insufficient to continue to define the JARVS and FOWEL fixes along V–37 within Canada using intersecting VOR radials. Cleveland Air Route Traffic Control Center, Buffalo Terminal Radar Approach Control, and NAV CANADA have agreed that usage of the V–37 airway segment north of the Erie, PA, VOR/Tactical Air Navigation (VORTAC) NAVAID for cross border air traffic is minimal and that there is adequate radar coverage over the area to provide air traffic control (ATC) services. As such, the proposed modification to V–37 would result in the airway terminating at the Erie VORTAC and not crossing into Canada. To overcome the loss of the airway segments extending beyond the Erie VORTAC into Canada, NAV CANADA plans to convert the JARVS and FOWEL fixes to waypoints. IFR traffic could file point to point through the affected area using the waypoints that will be established, or receive ATC radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the waypoints or ATC services listed previously.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airway V–37. The planned decommissioning of the Aylmer, Canada, VOR has made this action necessary. The proposed change is outlined below.

*V–37:* V–37 currently extends between the Craig, FL, VORTAC and the Toronto, ON, Canada, VOR/DME, excluding the airspace within Canada. The FAA proposes to remove the airway segments between the Erie, PA, VORTAC and the Toronto, ON, Canada, VOR/DME, and the language excluding the airspace within Canada. The unaffected portions of the existing airway would remain as charted.

All radials in the route description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–37 [Amended]**

From Craig, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; Allendale, SC; Columbia, SC; Charlotte, NC; Pulaski, VA; Elkins, WV; Clarksburg, WV; INT Clarksburg 359° and Ellwood City, PA, 185° radials; Ellwood City; to Erie, PA.

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15105 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2019–0474; Airspace Docket No. 19–AEA–2]**

**RIN 2120–AA66**

## Proposed Amendment of Air Traffic Service (ATS) Routes in the Vicinity of Glens Falls, NY

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

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

**SUMMARY:** This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–91, V–123, V–431, V–489, and V–496 due to the planned decommissioning of the Glens Falls, NY, VORTAC navigation aid which provides navigation guidance for segments of the routes. The Glens Falls VORTAC is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before September 3, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0474; Airspace Docket No. 19–AEA–2 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11C, 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 7400.11C at NARA, call (202) 741–6030, or go to *http://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:** Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

**Comments Invited**

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0474; Airspace Docket No. 19–AEA–2 and be submitted in triplicate to the Docket Management Facility (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: ''Comments to FAA Docket No. FAA–2019–0474; Airspace Docket No. 19–AEA–2''. The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRM's**

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see ''**ADDRESSES**'' section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend VOR Federal airways V–91, V–123, V–431, V–489, and V–496 due to the planned decommissioning of the Glens Falls, NY, VORTAC. The proposed changes are described below.

*V–91:* V–91 currently extends between the intersection of the Calverton, NY, VOR/DME 180° radial, and the Hampton, NY, VORTAC 223° radial; and the Burlington, VT, VOR/DME. The FAA proposes to remove the route segments between the Albany, NY, VORTAC, and Burlington, VT. As amended, V–91 would extend between the intersection of the above Calverton and Hampton radials; and Albany, NY. Alternative routing between Albany and Burlington, VT, is available via V–542 from Albany to Cambridge, NY, then V–487 to Burlington.

*V–123:* V–123 currently extends between the intersection of the Washington, DC, VOR/DME 065° radial, and the Baltimore, MD, VORTAC 197° radial; and the Glens Falls, NY, VORTAC. This proposal would remove the segment between the Cambridge, NY, VOR/DME and Glens Falls. As amended, V–123 would extend between the intersection of the above Washington, DC, and the Baltimore, MD, radials; and the Cambridge, NY, VOR/DME.

*V–431:* V–431 currently extends between the intersection of the Boston, MA, VOR/DME 015° radial, and the Gardner, MA, VOR/DME 097° radial; and the intersection of the Glens Falls, NY, VORTAC 286° radial, and the Albany, NY, VORTAC 350° radial. This proposal would remove the segments between the Gardner, MA, VOR/DME, and the intersection of the Glens Falls, NY 286° and the Albany, NY 350° radials. The amended route would extend between the intersection of the Boston, MA, VOR/DME 015° radial, and the Gardner, MA, VOR/DME 097° radial; and Gardner, MA.

*V–489:* V–489 currently extends between the intersection of the Sparta, NJ, VORTAC 300° radial and the Huguenot, NY, VOR/DME 196° radial; and Glens Falls, NY VORTAC. This proposal would remove the segment between the Albany, NY, VORTAC and Glens Falls, NY. As amended V–489 would extend between the intersection of the Sparta, NJ, 300° radial and the Huguenot, NY, 196° radial; and Albany, NY.

*V–496:* V–496 currently extends between the Utica, NY, VORTAC, and the Kennebunk, ME, VOR/DME. This proposal would remove the segments between Utica, NY, and the Lebanon, NH VOR/DME. As amended, V–496 would extend between Lebanon, NH, and Kennebunk, ME. For alternative routing between Utica, NY, and Lebanon, NH, flights could use V–490 from Utica, to Cambridge, NY, then V–542 from Cambridge to Lebanon.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–91 [Amended]**

From INT Calverton, NY, 180° and Hampton, NY, 223° radials; Calverton; Bridgeport, CT; to Albany, NY.

**V–123 [Amended]**

From INT Washington, DC, 065° and Baltimore, MD, 197° radials, via INT Washington, DC, 065° and Woodstown, NJ, 230° radials; Woodstown; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Carmel, NY, 157° radials; Carmel; INT Carmel 344° and Albany, NY, 181° radials; Albany; to Cambridge, NY.

**V–431 [Amended]**

From INT Boston, MA, 015°and Gardner, MA, 097° radials, to Gardner, MA.

**V–489 [Amended]**

From INT Sparta, NJ, 300° and Huguenot, NY, 196° radials; Huguenot; INT Huguenot 008° and Albany, NY, 209° radials; to Albany, NY.

**V–496 [Amended]**

From Lebanon, NH; to Kennebunk, ME.

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15108 Filed 7–16–19; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2019–0475; Airspace Docket No. 19–ANE–2]**

**RIN 2120–AA66**

## Proposed Amendment and Revocation of Air Traffic Service (ATS) Routes in the Vicinity of Berlin, NH

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

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

**SUMMARY:** This action proposes to remove VHF Omnidirectional Range (VOR) Federal airway V–104, and modify V–322, due to the planned decommissioning of the Berlin, NH, VOR/DME navigation aid which provides navigation guidance for segments of the routes. The Berlin VOR/DME is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before September 3, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0475; Airspace Docket No. 19–ANE–2 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11C, 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 7400.11C at NARA, call (202) 741–6030, or go to *http://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:** Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the northeastern United States to maintain the efficient flow of air traffic.

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0475; Airspace Docket No. 19–ANE–2 and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0475; Airspace Docket No. 19–ANE–2''. The postcard will be date/time stamped and returned to the commenter.

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

### Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points,

dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to remove VOR Federal airway V–104, and amend VOR Federal airway V–322 due to the planned decommissioning of the Berlin, NH, VOR/DME. The proposed changes are described below.

*V–104:* V–104 currently extends between the Burlington, VT, VOR/DME, and the Bangor, ME, VORTAC. The FAA proposes to remove V–104 in its entirety. An alternative route between Burlington and Bangor would be available from Burlington via V–141 to Concord, NH; then V–39 to Augusta, ME; then V–3 to Bangor.

*V–322:* V–322 currently extends between the Concord, NH, VOR/DME, and the Sherbrooke, PQ, Canada, VOR/DME. The FAA proposes to remove the segments of V–322 between the intersection of the Concord, NH, VOR/DME 022°(T)/037°(M) and the Augusta, ME, 265°(T)/283°(M) radials (*i.e.,* the charted WYLIE Fix); and the Sherbrooke VOR/DME. As amended, V–322 would extend between the Concord, NH, VOR/DME, and the intersection of the Concord, NH, VOR/DME 022°(T)/037°(M) and the Augusta, ME, 265°(T)/283°(M) radials (*i.e.,* the charted WYLIE Fix).

Alternative routing between Concord, NH and Sherbrooke, Canada would be available from Concord via V–141 to Lebanon, NH; V–151 to Montpelier, VT; then V–447 to Sherbrooke.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–104 [Removed]**

**V–322 [Amended]**

From Concord, NH, to INT Concord 022°(T)/037°(M) and Augusta, ME, 265°(T)/283°(M) radials.

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15112 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2019–0476; Airspace Docket No. 19–AGL–7]**

**RIN 2120–AA66**

## Proposed Amendment of VOR Federal Airways V–148, V–177, and V–345 in the Vicinity of Ely, MN, and Hayward, WI

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

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

**SUMMARY:** This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–148 and V–345 in the vicinity of Hayward, WI, and remove V–177 in the vicinity of Ely, MN, and Hayward, WI. The VOR Federal airways modifications and removal are necessary due to the planned decommissioning of the Ely, MN, and Hayward, WI, VOR navigation aids (NAVAIDs), which provide navigation guidance for portions of the affected air traffic service (ATS) routes. The Ely and Hayward VORs are being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before September 3, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0476; Airspace Docket No. 19–AGL–7 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11C, 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 7400.11C 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:** Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

## Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0476; Airspace Docket No. 19–AGL–7) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0476; Airspace Docket No. 19–AGL–7.'' The postcard will be date/time stamped and returned to the commenter.

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

## Availability of NPRMs

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

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

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## Background

The FAA is planning decommissioning activities for the Ely, MN, and Hayward, WI, VORs in 2020 as two of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portions of the Ely and Hayward VOR/Distance Measuring Equipment (DME) NAVAIDs are planned for decommissioning, the DME portions are being retained. The ATS routes impacted by the Ely and Hayward VORs are VOR Federal airways V–148, V–177, and V–345.

With the planned decommissioning of the Ely and Hayward VORs, the remaining ground-based NAVAID coverage in the Ely, MN, and Hayward, WI, areas is insufficient to enable the continuity of the affected airways. As such, the proposed modification to V–148 would result in a gap in the airway between the next NAVAIDs beyond the Hayward VOR; the proposed modification to V–345 would result in the airway ending at the NAVAID prior to the Hayward VOR; and V–177 would be removed entirely. To overcome the loss of the airway segments proposed to be removed, instrument flight rules (IFR) traffic could use adjacent VOR Federal airways V–26 and V–129 between the Wausau, WI, VOR/Tactical Air Navigation (VORTAC) and the Duluth, MN, VORTAC or VOR Federal airways V–78 and V–413 between the Gopher, MN, VORTAC and the Ironwood, MI, VOR/DME to circumnavigate the affected area. Additionally, IFR traffic could file point to point through the affected area using fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

## The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airways V–148 and V–144, and remove VOR Federal airway V–177. The planned decommissioning of the Ely, MN, and Hayward, WI, VORs has made these actions necessary. The proposed VOR Federal airway changes are outlined below.

*V–148:* V–148 currently extends between the Falcon, CO, VORTAC and the Houghton, MI, VOR/DME. The FAA proposes to remove the airway segment between the Gopher, MN, VORTAC and the Ironwood, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

*V–177:* V–177 currently extends between the Joliet, IL, VOR/DME and the Ely, MN, VORTAC. The FAA proposes to remove the airway in its entirety.

*V–345:* V–345 currently extends between the Dells, WI, VORTAC and the Hayward, WI, VOR/DME. The FAA proposes to remove the airway segment between the Eau Claire, WI, VORTAC and the Hayward, WI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

All radials in the route descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–148 [Amended]**

From Falcon, CO; Thurman, CO; 65 MSL INT Thurman 067° and Hayes Center, NE, 246° radials; Hayes Center; North Platte, NE; O'Neill, NE; Sioux Falls, SD; Redwood Falls, MN; to Gopher, MN. From Ironwood, MI; to Houghton, MI.

* * * * *

**V–177 [Removed]**

* * * * *

**V–345 [Amended]**

From Dells, WI; INT Dells 321° and Eau Claire, WI, 134° radials; to Eau Claire.

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15104 Filed 7–16–19; 8:45 am]

**BILLING CODE 4910–13–P**

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2019–0542; Airspace Docket No. 19–ASW–6]**

**RIN 2120–AA66**

## Proposed Revocation of VHF Omnidirectional Range (VOR) Federal Airway V–369 Due to the Decommissioning of the Groesbeck, TX, VOR

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

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

**SUMMARY:** This action proposes to remove VHF Omnidirectional Range (VOR) Federal airway V–369 in its entirety between Navasota, TX, and Dallas-Fort Worth, TX. The FAA is proposing this action due to the planned decommissioning of the Groesbeck, TX (GNL), VOR navigation aid (NAVAID) which provides navigation guidance for portions of the affected ATS routes. The Groesbeck VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before September 3, 2019.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0542; Airspace Docket No. 19–ASW–6 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov*.

FAA Order 7400.11C, 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 7400.11C 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:** Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System as

necessary to preserve the safe and efficient flow of air traffic.

**Comments Invited**

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

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0542; Airspace Docket No. 19–ASW–6) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0542; Airspace Docket No. 19–ASW–6.'' The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRMs**

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

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

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

This document proposes to amend FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**Background**

The FAA is planning to decommission the Groesbeck, TX (GNL), VOR in March 2020. The Groesbeck VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

With the planned decommissioning of the Groesbeck VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of V–369. As such, proposed removal of V–369 will result in a gap in the en route structure between Navasota, TX, and Dallas-Fort Worth, TX. To overcome the gap that would result in the en route structure, the FAA plans to amend the current fixes located along V–369 by converting them into RNAV waypoints that would remain in place to assist pilots and air traffic controllers already familiar with them, for navigation purposes. Instrument flight rules (IFR) traffic could file point-to-point through the affected area using the waypoint fixes that will remain in place, or could receive air traffic control (ATC) radar vectors through the area. Additionally, the Groesbeck Distance Measuring Equipment (DME) facility is planned to be retained and charted as a DME facility with the ''GNL'' three-letter identifier. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the ATC services previously listed.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to remove the description of VOR Federal airway V–369. The planned decommissioning of the Groesbeck, TX, VOR has made this action necessary. The proposed VOR Federal airway action is described below.

*V–369:* V–369 currently extends between the Navasota, TX, VOR/DME and the Maverick, TX, VOR/DME. The FAA proposes to remove the airway in its entirety.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–369 [Removed]**

* * * * *

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15100 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Docket No. FAA–2019–0094; Airspace Docket No. 15–AWP–17]**

**RIN 2120–AA66**

## Proposed Establishment of Restricted Area R–7202; Guam, GU

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

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

**SUMMARY:** The FAA is withdrawing the NPRM published in the **Federal Register** on March 5, 2019, proposing to establish Restricted Area R–7202 on the island of Guam, GU. The FAA does not establish restricted areas for small arms gun ranges.

**DATES:** The proposed rule establishing Restricted Area R–7202 is withdrawn as of July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Ready, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

The FAA published a NPRM in the **Federal Register** for Docket No. FAA–2019–0094. (84 FR 7840; March 5, 2019). The NPRM proposed to establish restricted area R–7202 on the island of Guam, GU.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Six comments were received.

### Discussion of Comments

Three comments were in support of the proposal. One commenter suggested relocating the range to a location where bird and wildlife have been eradicated due to military expansion, as the proposed location would disrupt bird and wildlife. One commenter questioned the altitude of the proposal in relation to the weapons being proposed. One commenter questioned the United States Marine Corps (USMC) move from Okinawa due to China's tyrannical influences on Japan.

### FAA's Conclusions

The FAA does not issue restricted areas for small arms gun ranges within the United States. Issuing a restricted area for small arm gun ranges in Guam would set a precedent nationwide at military and countless civilian gun clubs. This proliferation of restricted areas would result in inefficient management of the National Airspace System (NAS).

The USMC purpose and need for the airspace is to provide a safe and effective area for live-fire training. The FAA allows for live-fire training at small arm gun ranges in within the United States without a restricted area. The USMC has numerous live fire ranges without the segregation that a restricted area provides and can complete their mission safely and effectively in Guam without one.

### List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

### The Withdrawal

■ Accordingly, pursuant to the authority delegated to me, the FAA withdraws the NPRM published in the **Federal Register** on March 5, 2019 (84 FR 7840), FR Doc. 2019–03931, is hereby withdrawn.

**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.

Issued in Washington, DC, on July 8, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15121 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–13–P

---

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3050

**[Docket No. RM2019–7; Order No. 5146]**

## Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Two). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 12, 2019.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Proposal Two
III. Notice and Comment
IV. Ordering Paragraphs

### I. Introduction

On July 9, 2019, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Two.

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), July 9, 2019 (Petition). The Postal Service filed a non-public library reference with Proposal Two. Library Reference USPS–RM2019–7/NP1, Nonpublic Material Relating to Proposal Two, July 9, 2019; Notice of Filing of USPS–RM2019–7/NP1 and Application for Nonpublic Treatment, July 9, 2019.

## II. Proposal Two

*Background.* In Docket No. RM2018–8, the Commission approved the Postal Service's methodology to distribute dispatch format revenue it receives from inbound LC/AO mail based whether the mailpiece was a letter, flat, or small packet/bulky letter.[2] However, the Commission noted that it was possible to refine the Postal Service's methodology to distribute inbound LC/AO revenue and that ''distributing dispatch format revenue to item formats based on the revenue per piece and revenue per pound for those mail flows where terminal dues are calculated on a per-item and per-kilogram basis [is] worthy of further evaluation.'' Order No. 4827 at 18. Although the Postal Service incorporated such a revenue distribution methodology in its Fiscal Year (FY) 2018 Annual Compliance Report (ACR), the Postal Service asserts that there was ''no prior opportunity . . . to seek Commission review of the new procedure incorporated into the ACR.'' Petition, Proposal Two at 2. In the FY 2018 Annual Compliance Determination, the Commission accepted the Postal Service's revenue distribution for inbound LC/AO mail for purposes of the compliance review, but directed the Postal Service to ''file a petition for the initiation of a proceeding to consider this proposed change in analytical principles[.]'' [3]

*Proposal.* The Postal Service's proposal seeks to revise the revenue distribution methodology for inbound LC/AO mailpieces. Currently, the Postal Service distributes inbound LC/AO revenue based on weight proportions by shape in the dispatch data. Petition, Proposal Two at 3. Proposal Two would distribute dispatch format revenue to item formats based upon the revenue per piece and the revenue per pound for those items where remuneration is based on a per-item and per-kilogram basis. *Id.* at 2–3.

*Rationale and impact.* The Postal Service states that Proposal Two will apply more detailed piece and weight data to distribute inbound LC/AO revenue. *Id.* at 3. The Postal Service notes that Proposal Two requests review of the methodology it used to distribute inbound LC/AO revenue in its FY 2018 ACR, which was described in its response to Chairman's Information Request No. 1. *Id.* at 2–3.

The impact of Proposal Two is that revenue for inbound small packets and bulky letters decreases as revenue for inbound letters and flats increases. *Id.* at 3. The Postal Service states that this result is expected as the previous revenue distribution method, based solely on weight, would allocate more revenue towards the heavier weighted small packets and bulky letters. *Id.*

## III. Notice and Comment

The Commission establishes Docket No. RM2019–7 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov*. Interested persons may submit comments on the Petition and Proposal Two no later than August 12, 2019. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2019–7 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), filed July 9, 2019.

2. Comments by interested persons in this proceeding are due no later than August 12, 2019.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2019–15128 Filed 7–16–19; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See generally* Docket No. RM2018–8, Order On Analytical Principles Used in Periodic Reporting (Proposal Five), September 21, 2018 (Order No. 4827). ''LC/AO'' is an abbreviation for ''lettres et cartes'' and ''autres objets,'' and is French for ''letters and cards'' and ''other objects.'' LC/AO refers to international letters, cards, flats, bulky letters, and small packets, whether under the Universal Postal Union (UPU) terminal dues system or bilateral or multilateral agreements. Inbound LC/AO contrasts with Inbound Letter Post, which refers to the Postal Service product consisting of letters, cards, flats, bulky letters, and small packets received under the terminal dues system. *See* Mail Classification Schedule (MCS), section 1130.

[3] Docket No. ACR2018, *Annual Compliance Determination Report,* April 12, 2019, at 81.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2019–0177; FRL–9996–60–Region 8]**

## Approval and Promulgation of Implementation Plans; Colorado; Regional Haze 5-Year Progress Report State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve Colorado's regional haze progress report, submitted as a revision to its State Implementation Plan (SIP) by the Colorado Department of Public Health and Environment (CDPHE). Colorado's SIP revision addresses requirements of the Clean Air Act (CAA) and the EPA's rules that require states to submit periodic reports describing progress toward Reasonable Progress Goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing plan addressing regional haze. Colorado's progress report explains that Colorado has implemented the measures in the regional haze plan due to be in place by the date of the progress report and that visibility in mandatory federal Class I areas affected by emissions from Colorado sources is improving. The EPA is proposing approval of Colorado's determination that the State's regional haze plan is adequate to meet RPGs for the first implementation period, which extended through 2018 and requires no substantive revision at this time.

**DATES:** Written comments must be received on or before August 16, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0177, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or

comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* 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.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kate Gregory, Air and Radiation Division, Environmental Protection Agency, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6175, or by email at *gregory.kate@epa.gov.*

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

## I. Background

States are required to submit progress reports that evaluate progress towards the RPGs for each mandatory federal Class I area [1] (Class I area) within the state and in each Class I area outside the state that may be affected by emissions from within the state. 40 CFR 51.308(g). In addition, the provisions of 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze plan. The first progress report must take the form of a SIP revision and is due 5 years after submittal of the initial regional haze SIP. Colorado submitted the initial regional haze SIP on May 25, 2011 and EPA approved the SIP on December 31, 2012.[2]

Twelve Class I areas are located in Colorado: Black Canyon of the Gunnison National Park, Eagles Nest Wilderness Area, Flat Tops Wilderness Area, Great Sand Dunes National Park, La Garita Wilderness Area, Maroon Bells-Snowmass Wilderness Area, Mesa Verde National Park, Mount Zirkle Wilderness Area, Rawah Wilderness Area, Rocky Mountain National Park, Weminuche Wilderness Area and West Elk Wilderness Area.[3] Monitoring and data representing visibility conditions in Colorado's twelve Class I areas is based on the six Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring sites located across the state.[4]

On May 2, 2016, Colorado submitted a progress report, which detailed the progress made in the first planning period toward implementation of the Long-Term Strategy (LTS) outlined in the 2012 regional haze SIP, the visibility improvement measured at Class I areas affected by emissions from Colorado sources, and a determination of the adequacy of the State's existing regional haze plan. The State provided a public hearing for comment on the Progress Report on November 19, 2015 and provided Federal Land Managers (FLMs) an opportunity to comment on the progress report.[5] The EPA is proposing to approve Colorado's May 2, 2016 SIP submittal.

## II. EPA's Evaluation of Colorado's Progress Report and Adequacy Determination

### *A. Regional Haze Progress Report*

This section describes the contents of Colorado's progress report and the EPA's analysis of the report, as well as an evaluation of the determination of adequacy required by 40 CFR 51.308(h) and the requirement for state and Federal Land Manager coordination in 40 CFR 51.308(i).

#### 1. Status of Implementation of Control Measures

In its Progress Report, Colorado summarizes the emissions reduction measures that were relied upon by Colorado in the regional haze plan for ensuring reasonable progress at the Class I areas within the state. The State's regional haze SIP established RPGs for 2018 and established a LTS.[6] [7] In its Progress Report, the State describes Federal air pollution control programs, including; engine and auto pollution standards and $NO_2$, $SO_2$ and Ozone National Ambient Air Quality Standards (NAAQS).[8] Additionally, Colorado describes State Regulation 9 as its smoke management program.[9] Colorado also reviewed the status of Best Available Retrofit Technology (BART) requirements for the BART-eligible and Reasonable Progress (RP) sources in the state. The units subject to BART and RP are listed below in Table 1: Sources Subject to BART and Reasonable Progress in Colorado.

TABLE 1—SOURCES SUBJECT TO BART AND REASONABLE PROGRESS IN COLORADO [10]

| BART and Reasonable Progress (RP) eligible sources | BART and Reasonable Progress (RP) source category | BART or Reasonable Progress (RP) source |
|---|---|---|
| Clark Units 1 & 2 | EGU | RP |
| Cherokee Units 1, 2, & 3 | EGU | RP |
| Cherokee Unit 4 | EGU | BART |
| Arapahoe Units 3 & 4 | EGU | RP |
| Valmont Unit 5 | EGU | BART |
| Pawnee Unit 1 | EGU | BART |
| Comanche Units 1 & 2 | EGU | BART |

[1] Areas designated as mandatory Class I federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). isted at 40 CFR part 81, Subpart D.

[2] 77 FR 76871 (December 31, 2012), codified at 40 CFR 52.320(c)(108)(i)(C) and 40 CFR 52.320(c)(124).

[3] Colorado Progress Report, p.4.

[4] Colorado Progress Report, p.6.

[5] Colorado Progress Report, p.38, ''Public Comments NPS,'' ''Public Comments USFS,'' Colorado's responses to those comments, and 'Hearing Notice' available in docket.

[6] 77 FR 18090 (March 26, 2012). Table 43—Colorado's URP and RP Goal for 2018.

[7] 77 FR 76871 (December 31, 2012).

[8] Colorado Progress Report, p. 17.

[9] Colorado Progress Report, p. 19. As explained in the Report, Colorado's smoke management program for open burning and prescribed fire activities are state-only provisions.

TABLE 1—SOURCES SUBJECT TO BART AND REASONABLE PROGRESS IN COLORADO [10]—Continued

| BART and Reasonable Progress (RP) eligible sources | BART and Reasonable Progress (RP) source category | BART or Reasonable Progress (RP) source |
|---|---|---|
| Hayden Units 1 & 2 | EGU | BART |
| Cameo Units 1 & 2 | EGU | RP |
| Craig Units 1 & 2 | EGU | BART |
| Craig Unit 3 | EGU | RP |
| Nucla Unit 4 | EGU | RP |
| Rawhide Unit 101 | EGU | RP |
| Martin Drake Units 5, 6 & 7 | EGU | BART |
| Nixon Unit 1 | EGU | RP |
| Holcim Cement Plant | Portland Cement Plant | RP |
| Cemex Lyons Kiln and Dyer Cement Plant | Portland Cement Plant | BART |
| CENC Boiler 3 | EGU | RP |
| CENC Boilers 4 & 5 | EGU | BART |

In its Progress Report, Colorado provides the status of these BART and Reasonable Progress sources in the State. Table 2: Current Status of Colorado Sources Subject to BART and Reasonable Progress, shows emissions reductions from control types, including; selective catalytic reduction (SCR), low $NO_X$ burners (LNB), ultra-low $NO_X$ burners plus overfire air, selective non-catalytic reduction (SCNR), lime spray dryers, dry sorbent injection and wet lime scrubbers.[11] As can be seen in Table 2, implementation of emission controls has resulted in $NO_X$, $SO_2$ and PM reductions during the time period listed (2006–2018).

[10] 77 FR 76871, 76883 (December 31, 2012).

[11] Colorado Progress Report, p.16.

TABLE 2—CURRENT STATUS OF COLORADO SOURCES SUBJECT TO BART AND REASONABLE PROGRESS [12]

| | Nitrous Oxides ($NO_X$) | | | Sulfur Dioxides ($SO_2$) | | | Particulate Matter (PM) | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2006–2008 Baseline statewide $NO_X$ emissions (tons/year) | 2015 Statewide $NO_X$ reductions (tons/year) | 2018 Statewide $NO_X$ reductions (tons/year) | 2006–2008 Baseline statewide $SO_2$ emissions | 2015 Statewide $SO_2$ reductions (tons/year) | 2018 Statewide $SO_2$ reductions (tons/year) | 2006–2008 Baseline statewide PM emissions (tons/year) | 2015 Statewide PM reductions (tons/year) | 2018 Statewide PM reductions (tons/year) |
| Clark Units 1 & 2 | 861 | 861 | 861 | 1,457 | 1,457 | 1,457 | 72 | 72 | 72 |
| Cherokee Unit 1 | 1,556 | 1,556 | 1,556 | 2,221 | 2,221 | 2,221 | 37 | 37 | 37 |
| Cherokee Unit 2 | 2,895 | 2,895 | 2,895 | 1,888 | 1,888 | 1,888 | 35 | 35 | 35 |
| Cherokee Unit 3 | 1,866 | 0 | 1,866 | 743 | 0 | 743 | 65 | 65 | 65 |
| Cherokee Unit 4 | 4,274 | 0 | 2,211 | 2,135 | 0 | 2,127 | 78 | 77 | 77 |
| Arapahoe Unit 3 | 1,771 | 1,771 | 1,771 | 925 | 925 | 925 | 109 | 109 | 109 |
| Arapahoe Unit 4 | 1,148 | 1,148 | 1,148 | 1,765 | 1,765 | 1,765 | 20 | 20 | 20 |
| Valmont Unit 5 | 2,314 | 0 | 2,314 | 758 | 0 | 758 | 42 | 0 | 42 |
| Pawnee Unit 1 | 4,538 | 3,135 | 3,135 | 13,472 | 11,066 | 11,066 | 108 | 0 | 0 |
| Comanche Unit 1 | 1,506 | 0 | 0 | 1,539 | 0 | 0 | 84 | 0 | 0 |
| Comanche Unit 2 | 2,349 | 0 | 0 | 1,244 | 0 | 0 | 63 | 0 | 0 |
| Hayden Unit 1 | 3,750 | 3,120 | 3,120 | 1,172 | 61 | 61 | 96 | 0 | 0 |
| Hayden Unit 2 | 3,473 | 0 | 3,032 | 1,469 | 39 | 39 | 119 | 0 | 0 |
| Cameo Units 1 & 2 | 1,140 | 1,140 | 1,140 | 2,618 | 2,618 | 2,618 | 225 | 225 | 225 |
| Craig Unit 1 | 5,190 | 0 | 0 | 970 | 0 | 0 | 100 | 0 | 0 |
| Craig Unit 2 | 5,372 | 0 | 3,975 | 982 | 0 | 0 | 87 | 0 | 0 |
| Craig Unit 3 | 5,693 | 0 | 854 | 1,792 | 0 | 0 | 70 | 0 | 0 |
| Nucla Unit 4 | 1,675 | 0 | 0 | 1,335 | 0 | 0 | 55 | 0 | 0 |
| Rawhide Unit 101 | 1,866 | 448 | 448 | 913 | 0 | 0 | 117 | 0 | 0 |
| Drake Unit 5 | 768 | 0 | 215 | 1,269 | 0 | 762 | 27 | 0 | 0 |
| Drake Unit 6 | 1,413 | 509 | 509 | 2,785 | 0 | 2,368 | 58 | 0 | 0 |
| Drake Unit 7 | 2,081 | 749 | 749 | 4,429 | 0 | 3,764 | 55 | 0 | 0 |
| Nixon Unit 1 | 2,357 | 0 | 707 | 4,121 | 0 | 3,215 | 87 | 0 | 0 |
| Holcim Unit 1 | 3,186 | 0 | 1,099 | 287 | 0 | 0 | 58 | 0 | 0 |
| Cemex Cement | 1,747 | 0 | 846 | 95 | 0 | 0 | 10 | 0 | 0 |
| CENC Boiler 3 | 180 | −66 | −66 | 257 | 0 | 0 | 2 | 0 | 0 |
| CENC Boiler 4 | 599 | 214 | 214 | 780 | 0 | 0 | 11 | 0 | 0 |
| CENC Boiler 5 | 691 | 354 | 354 | 1,406 | 0 | 0 | 18 | 0 | 0 |
| Total Emissions Reductions (tons/year) | 66,528 | 17,833 | 34,952 | 54,828 | 22,040 | 35,777 | 1,908 | 640 | 682 |

EPA also approved provisions in Colorado's regional haze SIP covering certain existing internal combustion engines (RICE) reasonable progress sources. These provisions control ozone via ozone precursors (volatile organic compounds (VOCs) and $NO_X$) from certain existing RICE,[13] and therefore, the State's Report includes information about emission reductions from these types of sources. [14]

EPA proposes to find that Colorado has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding the implementation status of control measures because the State's Progress Report provides documentation of the implementation of measures within Colorado, including the BART-eligible sources and RP sources in the State.

2. Summary of Emissions Reductions

In its Progress Report, Colorado presents information on emissions reductions achieved across the State from the pollution control strategies discussed above. The Progress Report includes statewide $SO_2$, $NO_X$, VOCs and PM (fine and coarse) emissions data from Western Regional Air Partnership (WRAP) emissions inventories.[15] [16] The Progress Report includes emissions inventories the 2002 WRAP (Plan02d) and the 2008 WRAP (WestJump2008c) as baseline data and the 2011 WRAP (WAQDW 2011v1) as updated data from the baseline.[17] The emissions data shows that there were decreases in emissions of $SO_2$ and $NO_X$ over the time period (*i.e.,* 2002 and 2011).

In its Progress Report, Colorado provides information that shows emissions from $NO_X$ and $SO_2$ have decreased over the time period listed (2002–2011).[18] The State cites regional haze and mobile source controls for being effective at reducing $NO_X$ and $SO_2$.[19] The State provides data that shows both coarse and fine particulate matter increasing over the time period listed (2002–2011).[20] In its Progress Report, Colorado explains that both 'coarse and fine particulate matter are dominated by fugitive and windblown dust' and presents data to show that fugitive and wind-blown dust are source categories that most impact coarse and fine PM.[21] The State explains the origins of the increase in fugitive road dust seen in Figures 5b and 5c are unclear.[22] Additionally, the State presents data to show that VOC emissions decreased in the time period 2002–2008 and increased in the time period 2008–2011.[23]

The EPA proposes to find that Colorado has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding emissions reductions achieved because the State identifies emissions reductions for $SO_2$ and $NO_X$. Additionally, Colorado presents sufficient emission inventory information and discussion regarding emissions trends for coarse and fine PM during the 2002–2011 time period.

3. Visibility Conditions and Changes

In its Progress Report, Colorado provides information on visibility conditions for the Class I areas within its borders. The Progress Report addressed current visibility conditions and the difference between current visibility conditions and baseline visibility conditions, expressed in terms of 5-year rolling averages of these annual values, with values for the most impaired (20% worst days), least impaired and/or clearest days (20% best days). The period for calculating current visibility conditions is the most recent 5-year period preceding the required date of the progress report for which data were available as of a date 6 months preceding the required date of the progress report.

Colorado's Progress Report provides figures with visibility monitoring data for the twelve Class I areas within the State. Colorado reported current visibility conditions for the 2009–2013 5-year time period and used the 2000–2004 baseline period for its examination of visibility conditions and changes in the State.[24] In its Progress Report, Colorado presents visibility data, in deciviews, and representative IMPROVE monitors for Class I areas without an IMPROVE monitor, as there are not IMPROVE monitors in each of Colorado's twelve Class I areas. Table 3: Colorado's Class I areas and IMPROVE Sites, below, shows the IMPROVE monitors used for each Class I area.[25]

TABLE 3—COLORADO'S CLASS I AREAS AND IMPROVE SITES

| Class I area | IMPROVE site |
|---|---|
| Great Sand Dunes National Park. | GRSA1 |
| Mesa Verde National Park ... | MEVE1 |
| Mount Zirkle Wilderness Area. | MOZI1 |
| Rawah Wilderness Area ..... | MOZI1 |
| Rocky Mountain National Park. | ROMO1 |
| Weminuche Wilderness Area | WEMI1 |
| Black Canyon of the Gunnison National Park. | WEMI1 |
| La Garita Wilderness Area ... | WEMI1 |
| Eagle's Nest Wilderness Area. | WHRI1 |
| Flat Tops Wilderness Area .. | WHRI1 |
| Maroon Bells-Snowmass Wilderness Area. | WHRI1 |
| West Elk Wilderness Area ... | WHRI1 |

Table 4: Visibility Progress in Colorado's Class I Areas, below, shows the difference between the current visibility conditions (represented by 2009–2013 data), baseline visibility conditions (represented by 2000–2004 data) and the 2018 RPGs.

[12] Colorado Progress Report, p.16.

[13] 77 FR 76871, 76883 (December 31, 2012).

[14] Colorado Progress Report, p.19.

[15] Colorado Progress Report, Tables 4a to 4h, pp. 22 to 29. Colorado, as other states, relies on the WRAP emissions inventories for examination of visibility changes. CO used WRAP regional summary reports for the period 2011–2013 to compare to baseline emissions data (2000–2004). The WRAP's inventories were developed using EPA's National Emissions Inventory (NEI) and other sources (*https://www.wrapair2.org/emissions.aspx*). The NEI is based primarily upon data provided by state, local, and tribal air agencies (including Colorado) for sources in their jurisdiction and supplemented by data developed by the EPA.

[16] The State included emissions data on VOCs, Ammonia and Elemental Carbon.

[17] Colorado Progress Report, pp. 22, 23, 26, 27.

[18] Colorado Progress Report, pp. 22 & 23.

[19] Ibid.

[20] Colorado Progress Report, pp. 26 & 27.

[21] Colorado Progress Report, p. 26.

[22] Colorado Progress Report, pp. 26 & 31.

[23] Colorado Progress Report, p. 23.

[24] For the first regional haze plans, ''baseline'' conditions were represented by the 2000–2004 time period. *See* 64 FR 35730 (July 1, 1999).

[25] Colorado Progress Report, p.6.

TABLE 4—VISIBILITY PROGRESS IN COLORADO'S CLASS I AREAS [26]

| Colorado's class I area | IMPROVE site | Current period deciviews 2009–2013 (dv) | Baseline period deciviews 2000–2004 (dv) | Difference in deciviews (dv) Current-baseline | CO 2018 RPG |
|---|---|---|---|---|---|
| **20% Worst Days [27] [20% Most Anthropogenically Impaired Days]** | | | | | |
| Great Sand Dunes National Park | GRSA1 | 11.56 | 12.80 | −1.24 | 12.20 |
| Mesa Verde National Park | MEVE1 | 11.24 | 13.00 | −1.76 | 12.50 |
| Mount Zirkle Wilderness Area | MOZI1 | 9.12 | 10.50 | −1.38 | 9.91 |
| Rawah Wilderness Area | MOZI1 | 9.12 | 10.50 | −1.38 | 9.91 |
| Rocky Mountain National Park | ROMO1 | 11.84 | 13.80 | −1.96 | 12.83 |
| Weminuche Wilderness Area | WEMI1 | 9.88 | 10.30 | −0.42 | 9.83 |
| Black Canyon of the Gunnison National Park | WEMI1 | 9.88 | 10.30 | −0.42 | 9.83 |
| La Garita Wilderness Area | WEMI1 | 9.88 | 10.30 | −0.42 | 9.83 |
| Eagle's Nest Wilderness Area | WHRI1 | 8.48 | 9.60 | −1.12 | 8.98 |
| Flat Tops Wilderness Area | WHRI1 | 8.48 | 9.60 | −1.12 | 8.98 |
| Maroon Bells—Snowmass Wilderness Area | WHRI1 | 8.48 | 9.60 | −1.12 | 8.98 |
| West Elk Wilderness Area | WHRI1 | 8.48 | 9.60 | −1.12 | 8.98 |
| **20% Best Days [28]** | | | | | |
| Great Sand Dunes National Park | GRSA1 | 3.80 | 4.50 | −0.70 | 4.16 |
| Mesa Verde National Park | MEVE1 | 3.00 | 4.32 | −1.32 | 4.10 |
| Mount Zirkle Wilderness Area | MOZI1 | 0.46 | 1.60 | −1.55 | 1.29 |
| Rawah Wilderness Area | MOZI1 | 0.46 | 1.60 | −1.55 | 1.29 |
| Rocky Mountain National Park | ROMO1 | 1.58 | 2.28 | −0.70 | 2.06 |
| Weminuche Wilderness Area | WEMI1 | 2.06 | 3.10 | −1.04 | 2.93 |
| Black Canyon of the Gunnison National Park | WEMI1 | 2.06 | 3.10 | −1.04 | 2.93 |
| La Garita Wilderness Area | WEMI1 | 2.06 | 3.10 | −1.04 | 2.93 |
| Eagle's Nest Wilderness Area | WHRI1 | [29] −0.10 | 0.73 | −0.83 | 0.53 |
| Flat Tops Wilderness Area | WHRI1 | −0.10 | 0.73 | −0.83 | 0.53 |
| Maroon Bells—Snowmass Wilderness Area | WHRI1 | −0.10 | 0.73 | −0.83 | 0.53 |
| West Elk Wilderness Area | WHRI1 | −0.10 | 0.73 | −0.83 | 0.53 |

As shown in Table 4, all IMPROVE monitoring sites within the State show improvement in visibility conditions on the 20% best days and are meeting the 2018 20% best days RPGs.[30] Additionally, five of the six IMPROVE monitors show visibility better than the 2018 20% worst days RPGs.[31] The IMPROVE site that does not show visibility data meeting the 2018 20% worst days RPGs, Weminuche (WEMI1), that represents three class one areas in the state, shows progress from the baseline period provided (2002–2004), however, for the years 2009 through 2013, visibility falls short of the 2018 RPG by only 0.05 dv.[32]

Additionally, in its Progress Report, Colorado describes visibility in the state being significantly impacted by anthropogenic emissions from within the state and regional 'blowing dust, wildfires, and transport of pollutants into Colorado from international emissions and other western states, much of which is not controllable by state measures.' [33]

The EPA proposes to find that Colorado has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding assessment of visibility conditions because the State provided baseline visibility conditions (2002–2004), more current conditions based on the most recently available visibility monitoring data available at the time of Progress Report development (2011–2015), the difference between these current sets of visibility conditions and baseline visibility conditions, and the change in visibility impairment from 2000–2015 at the Class I areas.

4. Emissions Tracking

In its Progress Report, Colorado presents data from the statewide emissions inventory for 2008 (WestJump 2008c) and 2011 (WAQDW 2011v1) and compares this data to the baseline emissions inventory for 2002 (Plan02d). The pollutants inventoried include $SO_2$, $NO_X$, VOCs and PM (fine and coarse). The emissions inventories include the following type of source or activity classifications: Point; area; on-road mobile; off-road mobile; point and WRAP area (including oil and gas); fugitive and road dust; anthropogenic fire; natural fire; biogenic and wind-blown dust from both anthropogenic and natural sources. Table 5 presents the 2002 baseline, and the 2008 and 2011 more current data. As can be seen in Table 5, statewide emissions of both $SO_2$ and $NO_X$ are lower than the projected 2018 emissions, while statewide emissions for both coarse and fine PM have increased in the time period shown. As is discussed above in section 2, Colorado explains that both coarse and fine PM are dominated by fugitive and windblown dust and presents data to show that fugitive and wind-blown dust are source categories that most impact coarse and fine PM and that the origins are unclear to the State.[34] VOCs decreased between the years 2002 and 2008 and increased between the years 2008 and 2011.

[26] Colorado Progress Report, p. 8.

[27] Colorado Progress Report, p. 6.

[28] Ibid.

[29] While counterintuitive, deciview values are sometimes negative and represent pristine visibility conditions.

[30] Colorado Progress Report, p. 8.

[31] Ibid.

[32] Colorado Progress Report, p.10.

[33] Colorado Progress Report, p.10.

[34] Colorado Progress Report, p. 26.

TABLE 5—EMISSIONS PROGRESS IN COLORADO [35]

| | $SO_2$ (tons/year) | $NO_X$ (tons/year) | PM Coarse (tons/year) | PM Fine (tons/year) | VOCs (tons/year) |
|---|---|---|---|---|---|
| 2002 Total Emissions (Plan02d) | 114,636 | 404,465 | 222,546 | 34,681 | 1,181,756 |
| 2008 Total Emissions (WestJump 2008c) | 68,118 | 329,727 | 258,365 | 43,613 | 612,318 |
| 2011 Total Emissions (WAQDW 2011v1) | 54,021 | 273,905 | 354,084 | 57,571 | 735,121 |
| Change 2002–2008 (%) | −40% | −18% | 1% | 25% | −48% |
| Change 2008–2011 (%) | −52% | −32% | 37% | 32% | 20% |

The EPA is proposing to find that Colorado adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding emissions tracking because the State compared the most recent updated emission inventory data available at the time of Progress Report development with the baseline emissions inventory used in the modeling for the regional haze plan.

5. Assessment of Changes Impeding Visibility Progress

In its Progress Report, Colorado provided an assessment of any significant changes in anthropogenic emissions within or outside the State that have occurred. The State cites wildfire as a major factor in visibility changes in the State.[36] In its Progress Report, Colorado explains that the state is downwind of wildfire prone areas and is also adjacent to states that have wildfire impacting visibility in Colorado.[37] Colorado has a prescribed fire burn program (Regulation 9) that tracks emissions from coarse and fine PM resulting from these burns.[38] In its Progress Report, the State provides discussion on data from the National Interagency Fire Center, which tracks wild land and prescribed burns. This data shows that while the acres burned for prescribed fires remain relatively constant, there is significant variability in wild land fire acres burned from year to year.[39] As the data show, natural variability in fires continues to pose challenges for the State in evaluating the impacts of anthropogenic emissions on Regional Haze.[40]

The EPA proposes to find that Colorado has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding an assessment of significant changes in anthropogenic emissions. The EPA proposes to agree with Colorado's conclusion that wild fire (both inside and outside Colorado) and regional dust storms will likely impede future progress towards Regional Progress Goals.

6. Assessment of Current Implementation Plan Elements and Strategies

In its Progress Report, Colorado acknowledges the requirements of 40 CFR 51.308(g) to assess whether the current implementation plan elements and strategies are sufficient to enable the State, or other states with Class I areas affected by emissions from the State, to meet all established reasonable progress goals. In its Progress Report, Colorado explains the State had previous emissions modeling that showed impacts to visibility in a Class I Area in New Mexico, (WPHE1 IMPROVE monitor).[41] Colorado explains it exceeded the emission reduction goals in the 2011 RH SIP and that it can be reasonably expected that effects on the monitor where past modeling showed Colorado had this small impact are declining as a result of the RH controls in Colorado.[42] [43]

As seen in Table 4, visibility conditions have improved in the State at all IMPROVE monitoring sites and the State is meeting its RPGs in all Class I areas on the 20% best days. Additionally, five of the six IMPROVE sites meet the 2018 RPGs established for the state.[44]

The IMPROVE monitoring site with visibility not meeting the 2018 RPG, Weminuche (WEMI1), does show improvement despite significant wildfire events in the state during this planning period.[45] Looking in more detail at the data from this and other monitors, the State observed the following: Clear reductions in organic, sulfate, and nitrate fractions; slight increases in coarse mass and soil fractions; and the least amount of variability.[46] Colorado describes regional dust events, wildfire and interstate pollution as impacting this site, all of which are not reasonably controllable by statewide emission control measures.[47] Nevertheless, Colorado explains it will continue to monitor these concerns and evaluate possible additional controls on anthropogenic emissions impacting this site.[48] Therefore, Colorado believes that at this time this site is most impacted by natural variability in regional wind-blown dust and does not specifically recommend further analysis at this time.[49]

The EPA proposes to find that Colorado has adequately addressed the applicable provisions of 40 CFR 51.308(g) and agrees with the State's determination that its regional haze plan is sufficient to meet the RPGs for its Class I areas.

[35] Colorado Progress Report, Tables 4a, 4b, 4c, 4e & 4f, pp. 22 to 27.

[36] Colorado Progress Report, p. 34.

[37] Ibid.

[38] Colorado's Progress Report indicates that it ''maintains an EPA-approved prescribed burn program (Regulation 9)''. Colorado Progress Report, p. 34. As this statement conflicts with other statements in the Report, EPA sought clarification from the State and learned that that statement was inadvertently includes in the report. Email from Curtis Taipale, State Implementation Plan—Technical Development Unit Supervisor Planning and Policy Program, Colorado Department of Health & the Environment, to Kate Gregory, ''Request for Regional Haze Contact.'' June 18, 2019.

[39] Ibid.

[40] Colorado Progress Report, p. 34, and Figure 9 (p. 35) and Tables 4a–4h (pp. 22–29).

[41] Colorado Progress Report, p. 2.

[42] Colorado Progress Report, p. 2. Additionally, in approving Colorado's RH SIP, EPA determined that Colorado satisfied the RHR's requirements for consultation and included controls in the SIP sufficient to address the relevant requirements of the RHR related to impacts on Class I areas in other states. 77 FR 18052, 18094 (March 26, 2012). 77 FR 76871 (December 31, 2012).

[43] We provide the following to clarify statements made on page 37 of the State's Report. The State references its March 2010 Interstate Transport SIP submittal, where the State elected to satisfy one of the Interstate Transport requirements by providing information to show that it does not interfere with other State's measures to protect visibility through their RH SIP. 76 FR 8326, 8328 (February 14, 2011) (EPA proposed approval of Interstate Transport of Pollution Revisions for the 1997 8-Hour Ozone and 1997 $PM_{2.5}$ NAAQS); 76 FR 22036 (April 20, 2011) (EPA final action). In that action, EPA supplemented the State's Interstate Transport analysis and focused on the most impacted Class I area (Canyonlands)—rather than the IMPROVE monitor for the Wheeler Peak and Pecos Wildernesses mentioned in Colorado's Progress Report—and found that Colorado does not interfere with another States' measures to protect visibility in their RH SIP. 76 FR 8329.

[44] Colorado Progress Report, p. 36.

[45] Ibid.

[46] Colorado Progress Report, p. 36.

[47] Ibid.

[48] Ibid.

[49] Colorado Progress Report, p. 36.

7. Review of Current Monitoring Strategy

For progress reports for the first implementation period, the provisions under 40 CFR 51.308(g) require a review of the State's visibility monitoring strategy and any modifications to the strategy as necessary. In its Progress Report, Colorado summarizes the existing monitoring network in the State to monitor visibility at the twelve Class I areas within the State, which consists of Colorado relying on the national IMPROVE network to meet monitoring and data collection goals. There are currently six IMPROVE sites, which the State explains, continue to provide adequate and complete data records.[50] In the Progress Report, the State finds that the current monitoring network is sufficient at this time to monitor progress towards RPGs.[51] The IMPROVE monitoring network is the primary monitoring network for regional haze, both nationwide and in Colorado.

The EPA proposes to find that Colorado has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding a monitoring strategy because the State reviewed its visibility monitoring strategy and determined that no further modifications to the strategy are necessary.

*B. Determination of Adequacy of the Existing Regional Haze Plan*

The provisions under 40 CFR 51.308(h) require states to determine the adequacy of their existing implementation plan to meet existing goals. Colorado's Progress Report includes a negative declaration regarding the need for additional actions or emissions reductions in Colorado beyond those already in place and those to be implemented by 2018 according to Colorado's SIP.[52] [53]

The EPA proposes to conclude that Colorado has adequately addressed 40 CFR 51.308(h) because the visibility trends in the majority of Class I areas in the State indicate that the relevant RPGs will be met via emission reductions already in place and therefore the SIP does not require substantiative revisions at this time to meet those RPGs.

[50] Colorado Progress Report, p. 6.

[51] Colorado Progress Report, p. 37.

[52] Colorado Progress Report, p. 38.

[53] Additionally, Colorado's Report explains that the State "actively participates in maintenance of commitments associated with RH plan requirements" and continues "to work collaboratively with the scientific research community to refine our understanding of air quality issues in Colorado." Colorado Progress Report, p. 38.

## III. Proposed Action

The EPA is proposing to approve Colorado's May 2, 2016, Regional Haze Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

## IV. Statutory and Executive Order Reviews

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

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

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

**List of Subjects in 40 CFR Part 52**

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

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

Dated: July 11, 2019.

**Gregory Sopkin,**

*Regional Administrator, EPA Region 8.*

[FR Doc. 2019–15110 Filed 7–16–19; 8:45 am]

BILLING CODE 6560–50–P

---

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R08–OAR–2019–0340; FRL–9996–64–Region 8]**

## Designation of Areas for Air Quality Planning Purposes; Montana; Redesignation Request and Associated Maintenance Plan for East Helena $SO_2$ Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On October 26, 2018, the Montana Department of Environmental Quality (MDEQ) submitted a request to the EPA for redesignation of the East Helena, Montana 1971 sulfur dioxide ($SO_2$) National Ambient Air Quality Standards (NAAQS) nonattainment area (NAA) to attainment, and to approve a State Implementation Plan (SIP) revision for a maintenance plan of the East Helena area. After review and analysis of Montana's submittal, the EPA is proposing to redesignate the East Helena, Montana $SO_2$ nonattainment area to attainment for the 1971 primary 24-hour and annual, and secondary 3-hour $SO_2$ NAAQS, and to approve

Montana's SIP revision for continued maintenance and attainment of the 1971 primary 24-hour and annual, and secondary 3-hour $SO_2$ NAAQS in East Helena, Montana.

**DATES:** Written comments must be received on or before August 16, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0340, to the Federal Rulemaking Portal: *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

*Docket:* 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.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, (303) 312–7104, *clark.adam@epa.gov,* or Clayton Bean, (303) 312–6143, *bean.clayton@epa.gov,* Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

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

## I. Background for the EPA's Proposed Actions

### *A. The 1971 $SO_2$ NAAQS*

In 1971, the EPA promulgated new primary and secondary NAAQS for $SO_2$.[1] The primary standard addressed 24-hour and annual average ambient $SO_2$ concentrations. The secondary standard addressed 3-hour and annual average ambient $SO_2$ concentrations. In 1973, the EPA revoked the secondary annual average standard.[2] Thus, the 1971 $SO_2$ NAAQS is comprised of a primary 24-hour standard of 0.14 parts per million (ppm) not to be exceeded more than once per year, a primary annual average standard of 0.03 ppm, and a secondary 3-hour standard of 0.5 ppm not to be exceeded more than once per year.[3]

On June 2, 2010, the EPA revised the primary $SO_2$ NAAQS, thus establishing a new 1-hour $SO_2$ standard of 75 parts per billion (ppb). Although the 1971 primary $SO_2$ NAAQS have been revised to the 2010 1-hour $SO_2$ NAAQS, today's proposed action only addresses the 1971 $SO_2$ NAAQS for the East Helena NAA. The EPA notes that all of Lewis and Clark County, Montana, including the East Helena $SO_2$ NAA, is designated as ''attainment/unclassifiable'' under the 2010 $SO_2$ NAAQS.[4]

### *B. Nonattainment Designation and Development of the East Helena $SO_2$ Attainment SIP*

The American Smelting and Refining Company (ASARCO) lead smelter began operating in 1888 in the city of East Helena, Montana. ASARCO has been the cause of $SO_2$ violations throughout the history of the East Helena area,[5] as will be described further below, and was permanently shut down in 2001.]

On September 19, 1975 the EPA approved a revision to the Montana SIP for $SO_2$ control strategies providing for attainment and maintenance of the 1971 $SO_2$ NAAQS near the ASARCO lead smelter in East Helena. SIP-approved emission limitations for $SO_2$ at the ASARCO smelter were limited to 80 tons per day (tpd) and 20 tons per six hours.[6]

Section 107(d) of the 1977 CAA Amendments gave the EPA authority to designate areas as nonattainment without a state's request.[7] On March 3, 1978 the EPA designated the ''East Helena Area'' [8] as nonattainment for the primary and secondary $SO_2$ NAAQS.[9] The East Helena $SO_2$ NAA is demarcated by a circle centered on the previously existing ASARCO sinter storage building [10] with a radius of 0.67 km (0.43 miles).

On November 20, 1980 the EPA conditionally approved a SIP revision for the East Helena $SO_2$ NAA. This SIP revision identified the continued $SO_2$ violations as being caused by low-level downwash emissions from the three 110-foot stacks serving the smelter's blast furnace operations. The control strategy identified in the SIP revision included replacing the three 110-foot stacks with a single 425-foot stack and setting new emission limits on the 425-foot stack.[11] The EPA's action was conditioned upon adequate demonstration of good engineering practice (GEP) stack height for the new blast furnace stack, and revised dispersion modeling if GEP height was determined to be below 375 feet. ASARCO completed a field tracer study demonstration in 1982, and subsequently proceeded to complete construction of its new stack based on the study results justifying a stack height of 375 feet as necessary to overcome the effects of downwash, which had been identified as the cause of monitored ambient $SO_2$ violations near the smelter site.[12] On July 5, 1983 the EPA proposed to approve [13] the SIP and GEP demonstration as satisfying the conditional approval requirements, yet pending litigation [14] over federal stack

[1] 36 FR 8186, April 30, 1971.

[2] 38 FR 25678, September 14, 1973.

[3] Table of historical $SO_2$ NAAQS. *See https://www3.epa.gov/ttn/naaqs/standards/so2/s_so2_history.html*.

[4] *See* 40 CFR 81.327. *See also* the EPA's ''Air Quality Designations for the 2010 Sulfur Dioxide ($SO_2$) Primary National Ambient Air Quality Standard—Round 3,'' 83 FR 1098, January 9, 2018.

[5] 60 FR 5313, January 27, 1995.

[6] 40 FR 43216, September 19, 1975.

[7] After the EPA's initial designation of areas as attainment/unclassifiable or nonattainment in 1978, however, subsequent designations could be made only at a State's request. In that same year, the EPA published, for the first time, a list of all section 107(d) nonattainment areas in 40 CFR part 81, which included East Helena.

[8] Generally, where the EPA promulgated a designation for $SO_2$ the minimum area was to be the county in which the violating monitoring site was located. If states had monitoring data to substantiate the size of areas they designated, they would be acceptable by the EPA regardless of size. *See* 43 FR 8962, March 3, 1978.

[9] 43 FR 8962, March 3, 1978.

[10] NAD27 UTM Zone 12, 429484 mE, 5158997 mN.

[11] 45 FR 76685, November 20, 1980.

[12] 60 FR 5313, January 27, 1995.

[13] 48 FR 30696 July, 5, 1983.

[14] Sierra Club v. Environmental Protection Agency, 719 F.2d 436 (D.C. Cir. 1983).

height regulations postponed final EPA action until years later.

The CAA Amendments of 1990 reaffirmed the nonattainment designation of East Helena with respect to the primary and secondary $SO_2$ NAAQS under section 107(d).[15] Pursuant to the CAA Amendments of 1990, any state that lacked a fully-approved SIP complying with the requirements of the Act for an area designated as nonattainment with respect to the primary $SO_2$ NAAQS, was to resubmit a SIP fully meeting the requirements of the CAA by May 15, 1992. For the secondary $SO_2$ NAAQS SIP for East Helena, the EPA established November 15, 1993 as the submittal due date.[16]

Given that the East Helena primary $SO_2$ SIP was not submitted by May 15, 1992, the EPA made a finding of failure to submit, pursuant to section 179 of the Act, and notified the Governor in a findings letter dated June 16, 1992.[17] The date of the findings letter started the mandatory 18-month sanction clock and established a two-year deadline by which the EPA was required to promulgate a federal implementation plan (''FIP'').

In our October 7, 1993 ''Deadline for SIP Submittal'' action (58 FR 52237) the EPA recognized that for the ASARCO smelter, the primary and secondary $SO_2$ NAAQS do not require the same level of controls. Modeling results indicated an additional 35 percent reduction in emissions was needed (beyond those reductions to achieve the primary $SO_2$ NAAQS) in order to comply with the secondary $SO_2$ NAAQS.[18] We therefore concluded that attainment of the secondary $SO_2$ NAAQS will require significant emission reductions, beyond what was required for attainment of the primary $SO_2$ NAAQS.

After the East Helena primary $SO_2$ Attainment SIP was submitted by the State on March 30, 1994, the EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated May 12, 1994. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock for the primary $SO_2$ SIP under section 179 of the Act.[19]

On January 27, 1995 the EPA fully approved the East Helena primary $SO_2$ Attainment SIP for the East Helena NAA. The EPA noted in that approval action that Montana's SIP revision only addressed the 24-hour and annual primary $SO_2$ NAAQS, and did not address the 3-hour secondary $SO_2$ NAAQS.[20] The modeling conducted by the State to demonstrate attainment of the 1971 primary NAAQS by the applicable attainment deadline of November 15, 1995, which the EPA approved in our January 27, 1995 final rulemaking, will be discussed further in Section III.A. of today's proposed rulemaking action.

As the State of Montana failed to submit the East Helena secondary $SO_2$ Attainment SIP by November 15, 1993, the EPA acted pursuant to the non-discretionary requirement of section 179 of the Act by notifying the Governor in a findings letter dated January 19, 1994, of the State's failure to submit the $SO_2$ SIP secondary standard.[21] In the letter, the EPA also notified Montana of sanctions available to the EPA under section 110(m) that could be imposed, including highway funding sanctions, 2:1 emission offsets, and promulgation of a FIP under section 179(a). The date of the findings letter started the mandatory 18-month sanction and the two-year FIP clocks. The sanction clock expired due to inaction by the State on July 19, 1995, and the FIP clock expired on January 19, 1996. The EPA did not promulgate a FIP upon expiration of the FIP clock. As the sanction clocks were never stayed or deferred, emissions offsets and highway sanctions were imposed by operation of law and have remained in place to date.[22]

The State of Montana indicated that they were in the process of revising the 3-hour secondary $SO_2$ SIP for East Helena when ASARCO shut down operations on April 4, 2001.[23] Initially, the ASARCO shutdown was to be a suspension of operations for an indeterminate amount of time. Accordingly, ASARCO did not request revocation of their Title V operating permit, nor their Montana Air Quality Permit (MAQP #2557–12). ASARCO's indeterminate suspension of operations later officially became a permanent shutdown, and the State of Montana never resumed work on the required secondary $SO_2$ SIP. Therefore, the 3-hour secondary $SO_2$ SIP revision for East Helena was never submitted to the EPA, causing the aforementioned sanctions to remain in place. On April 4, 2007, ASARCO's Title V permit (#OP2557–04) expired without renewal, and on January 5, 2010, MAQP #2557–12 was formally revoked by the State of Montana.[24]

On November 25, 2002 the EPA made a technical correction to the East Helena $SO_2$ SIP pursuant to our authority under 110(k)(6) of the CAA. (67 FR 70554). Specifically, we clarified that in our January 27, 1995 approval of the East Helena primary $SO_2$ Attainment SIP (60 FR 5313), we failed to indicate that this approval superseded our approval of the East Helena $SO_2$ Attainment SIP on September 19, 1975 and terminated the East Helena $SO_2$ Attainment SIP approved on May 1, 1984. The November 25, 2002 action corrected these errors.

On October 26, 2018, the State of Montana submitted to the EPA a request for redesignation of the East Helena $SO_2$ NAA to attainment for the 1971 primary and secondary NAAQS (hereafter ''East Helena $SO_2$ Redesignation Request''), and a SIP revision containing a maintenance plan for the East Helena attainment area (hereafter ''East Helena $SO_2$ Maintenance Plan'').[25] The details of Montana's East Helena $SO_2$ Redesignation Request and Maintenance Plan are discussed in greater detail below.

### *C. Additional History of the East Helena $SO_2$ Nonattainment Area*

Between 1969 and 1983, concerns of contamination in the East Helena area led to investigations by the EPA and the State of Montana. High metal levels were found in air, soil, surface water, and dust in and around East Helena. In 1984, the EPA listed the 140-acre ASARCO smelter site and about 2,000 additional acres of surrounding land[26] on the Superfund program's National Priorities List (NPL).[27] In 1998, the

[15] *See* 56 FR 56694, November 6, 1991, ''Designation of Areas for Air Quality Planning Purposes'' at 56706.

[16] The Act did not explicitly specify a deadline for the secondary $SO_2$ NAAQS, however, section 172(b) provides that the Administrator shall establish a schedule for plan submissions, but that such submissions shall not extend longer than three years from the date of nonattainment designation.

[17] 57 FR 48614, October 27, 1992.

[18] 58 FR 52237, October 7, 1993.

[19] 60 FR 5313, January 27, 1995.

[20] *Ibid.*

[21] This letter is available in the docket for this action.

[22] *See https://www.fhwa.dot.gov/environment/air_quality/highway_sanctions/sanctionsclock.cfm* for the status of sanction clocks under the CAA, including East Helena's status.

[23] *See* ''East Helena $SO_2$ Redesignation Request'', October 26, 2018, at 5.

[24] The request to revoke MAQP (#2557–12), and MDEQ's letter in response confirming revocation, can be found in Appendix A of Montana's October 26, 2018 ''Request for Redesignation of East Helena $SO_2$ Nonattainment Area.''

[25] The submissions are collectively referred to as the ''East Helena $SO_2$ Redesignation Request and Maintenance Plan.''

[26] The East Helena Superfund site encompasses and extends beyond the exterior boundary of the East Helena $SO_2$ NAA.

[27] ''Fourth Five-Year Review Report for the East Helena Superfund Site,'' September 2016. *See https://semspub.epa.gov/work/08/1768518.pdf.*

United States Department of Justice issued a Consent Decree requiring ASARCO to resolve major environmental compliance issues under the Resource Conservation and Recovery Act (RCRA). ASARCO began dismantling the smelter site following the 2001 shutdown. ASARCO filed for bankruptcy in 2005, and on June 5, 2009, the Bankruptcy Court approved the Consent Decree and a Settlement Agreement.[28] In part, the settlement agreement transferred the East Helena ASARCO properties and administration thereof to the appointed Custodial Trustee, the Montana Environmental Trust Group (METG), who assumed responsibility of corrective action cleanup under oversight of the EPA. The three remaining smelter stacks were felled in a controlled demolition on August 4, 2009.[29] Later, in December 2009, the smelter site was officially transferred from ASARCO to the METG.[30]

As of mid-2019 all that remains of the former ASARCO smelter site is a 65-acre slag pile, and 65-acres of contaminated land that has been capped with an evapotranspiration cover. Restorative actions have allowed open meadows, grasslands, and wetlands to flourish on the former site; and one and a half miles of the Prickly Pear Creek has been successfully restored.[31] The site is privately held by METG, and public access is restricted. In the future, deed restrictions will be placed on the property that will prevent another facility from being constructed on the cap.

## II. CAA Requirements for Redesignation Requests and Maintenance Plans

### *A. Statutory Provisions*

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation of a nonattainment area provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of title I of the CAA.

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, however, CAA section 175A does not define the content of a maintenance plan.

### *B. EPA Guidance Applicable to the East Helena $SO_2$ Redesignation Request and Maintenance Plan*

On April 16, 1992, the EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in several guidance documents. Our primary guidance on maintenance plans and redesignation requests is a September 4, 1992 memo from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (hereafter referred to as the ''Calcagni Memo''). Specific guidance on $SO_2$ redesignations also appears in a January 26, 1995 memo from Sally L. Shaver, entitled ''Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas'' (hereafter referred to as the ''Shaver Memo''). The recommendations for addressing the redesignation request requirements of CAA section 107(d)(3)(E) and the maintenance plan requirements of 175A provided in these guidance documents will be referenced throughout the forthcoming sections. Guidance specific to areas lacking ambient monitoring data, and whose historic violations were caused by a major point source that is no longer in operation, is found in an October 18, 2000 memo from John S. Seitz entitled ''Redesignation of Sulfur Dioxide Nonattainment Areas in the Absence of Monitored Data'' (hereafter referred to as the ''Seitz Memo''). The Seitz Memo exempts eligible areas from the maintenance plan requirements of continued monitoring. The Seitz Memo also describes how attainment and continued maintenance should be demonstrated in such areas and how sources currently shut down should be treated if they resume operation. The EPA finds that the East Helena $SO_2$ NAA is an appropriate area for application of the guidance laid out in the Seitz Memo. Therefore, as will be discussed further in the EPA's review of the State's 175A maintenance plan (Section III.B.), the EPA is proposing to find that the East Helena maintenance area should not require ambient monitoring to verify continued attainment.

## III. EPA's Evaluation of the East Helena $SO_2$ Redesignation Request and Maintenance Plan

### *A. EPA Review of CAA Section 107(d)(3)(E) Requirements*

The EPA's evaluation of the East Helena $SO_2$ Redesignation Request was based on consideration of the five redesignation criteria provided under CAA section 107(d)(3)(E). We analyze each of these criteria individually, below. Based on this analysis, we propose to find that the State of Montana has met the redesignation criteria of CAA section 107(d)(3)(E).

1. Criteria (1) Determination That the East Helena Area Has Attained the 1971 $SO_2$ NAAQS

a. Review of Ambient Monitoring and Emissions Data

In the East Helena $SO_2$ Redesignation Request, the State primarily relied on historic $SO_2$ ambient data which indicated attainment of the 1971 primary and secondary NAAQS for the 15 years preceding the ASARCO facility shutdown in 2001. Ambient $SO_2$ monitoring began in the East Helena area as early as 1968. An enhanced ambient $SO_2$ monitoring network was established in 1993. This was the result of extensive efforts between ASARCO and the State of Montana (in coordination with the EPA) to identify maximum pollutant impact areas using

This document is also available in the docket for this action.

[28] *Ibid.*

[29] *See https://missoulian.com/news/state-and-regional/asarco-smokestacks-in-east-helena-toppled-in-early-morning-demolition/article_a86273aa-88e1-11de-9466-001cc4c03286.html.*

[30] ''Fourth Five-Year Review Report for the East Helena Superfund Site,'' September 2016. *See https://semspub.epa.gov/work/08/1768518.pdf.* This document is also available in the docket for this action.

[31] *See https://www.mtenvironmentaltrust.org/east-helena/photo-galleries/east-helena-site-videos/.*

tracing studies, monitored atmospheric dispersion parameters, dispersion modeling, and ambient $SO_2$ concentrations.[32] The ambient $SO_2$ monitoring network for the East Helena area was discontinued on May 31, 2001 following the ASARCO shutdown.

After reviewing the East Helena $SO_2$ Redesignation Request and the historic ambient $SO_2$ monitoring data, the EPA concludes that the monitoring data were collected, and quality assured in accordance with EPA guidelines.[33] Table 1 below shows for all of the 1971 $SO_2$ NAAQS the highest monitored $SO_2$ value in the East Helena area annually from 1987 to 2001 throughout the enhanced monitoring network.[34]

TABLE 1—AMBIENT $SO_2$ MONITORING IN EAST HELENA

[1987–2001]

| Year | Max 3-hour value (500 PPM secondary NAAQS) | Monitor | Max 24-hour block average (140 PPB primary NAAQS) | Monitor | Max annual average (30 PPB annual primary NAAQS) | Monitor |
|---|---|---|---|---|---|---|
| 1987 | 380 | Water Tank | 114.6 | Water Tank | 14.88 | Microwave. |
| 1988 | 446.6 | Water Tank | 107.1 | Water Tank | 9.35 | Water Tank. |
| 1989 | 396.6 | Water Tank | 120 | Water Tank | 6.28 | Water Tank. |
| 1990 | 443.4 | Water Tank | 67.1 | Water Tank | 6.95 | Water Tank. |
| 1991 | 406.6 | Water Tank | 57.5 | Water Tank | 5.01 | Kennedy Park. |
| 1992 | *279 | Kennedy Park | *123 | Kennedy Park | *12.93 | Kennedy Park. |
| 1993 | *201.6 | Water Tank | *54.3 | Water Tank | *5.35 | Kennedy Park. |
| 1994 | 230.6 | Water Tank | 78.2 | McClellan Rd #6 | 10.41 | Kennedy Park. |
| 1995 | 356 | Microwave | 112.7 | McClellan Rd #6 | 10.76 | Microwave. |
| 1996 | 223.3 | McClellan Rd #6 | 56 | McClellan Rd #6 | 9.24 | McClellan Rd #4. |
| 1997 | 166 | McClellan Rd #6 | 62.7 | McClellan Rd #6 | 5.64 | Water Tank. |
| 1998 | 199 | Water Tank | 42.7 | Water Tank | 5.33 | Kennedy Park. |
| 1999 | 151 | Water Tank | 46.6 | McClellan Rd #6 | 5.23 | Kennedy Park. |
| 2000 | 188.3 | McClellan Rd #6 | 62 | McClellan Rd #6 | 8.61 | Kennedy Park. |
| 2001 | *196.6 | McClellan Rd #6 | *91.2 | McClellan Rd #6 | *5.71 | McClellan Rd #6. |

*Indicates site did not have at least 75% data completeness for all 4 quarters this year.[35]

As Table 1 shows, there were no monitored violations of any of the 1971 $SO_2$ NAAQS from 1987 until the ASARCO shutdown in 2001 at which time monitoring was discontinued. For the purposes of determining whether an area has attained the $SO_2$ NAAQS predicated upon monitoring data, the EPA requires no fewer than two consecutive years of clean data (*i.e.,* eight quarters with no observed violations) as recorded in EPA's Air Quality System (AQS).[36] In addition, to qualify for attainment determination purposes, the annual average and second-highest 24-hour average concentrations must be based upon hourly data that are at least 75 percent complete in each calendar quarter.[37]

The East Helena NAA has recorded more than eight consecutive quarters of quality-assured monitoring data that is free of NAAQS violations while ASARCO operated. Specifically, the three enhanced network monitors (Microwave, Water Tank, Kennedy Park) operating in the period between 1987 and 1992 each showed five consecutive years (or 20 consecutive quarters) of complete, quality-assured attaining monitoring data from 1987 to 1991. As shown, the East Helena enhanced $SO_2$ monitoring network experienced data completeness issues in 1992 and 1993. Complete data are available for every year from 1994 to 2000 for all five enhanced network monitors (the aforementioned and the McClellan Road #4 and McClellan Road #6 monitors, both added as part of the enhanced network in 1993), which show seven consecutive years (or 28 consecutive quarters) of complete, quality-assured attaining monitoring data from 1994–2000. Further, from 1996 until 2001 (between the period of time from EPA's approval of the 1995 East Helena primary $SO_2$ Attainment SIP until ASARCO's shutdown), none of the East Helena area ambient $SO_2$ monitors recorded a maximum value equivalent to or above 50% of a primary or secondary 1971 $SO_2$ NAAQS. This decrease in monitored emissions is in alignment with emissions data, as the average annual $SO_2$ emissions from ASARCO dropped from 14,792 tons per year (tpy) from 1990–1995, to 10,000 tpy from 1996–2000.[38] These data indicate that the East Helena area was attaining the NAAQS before the ASARCO closure.

In the East Helena $SO_2$ Redesignation Request, the State also measured these monitor data alongside the emissions from the two $SO_2$ emitting sources in or near the East Helena NAA.[39] The State asserted that these emissions data, presented in Table 2, below, indicate that the attaining $SO_2$ monitor values were driven almost entirely by $SO_2$ emissions from ASARCO, and that it is therefore reasonable to conclude that the monitored concentrations would have decreased substantially (and thus continued attaining the NAAQS) following the ASARCO shutdown.

[32] "Primary $SO_2$ NAAQS SIP Revision for East Helena, Montana, Technical Support Document, October 4, 1994," at pages 13–15.

[33] Calcagni Memo at 2.

[34] From 1986 to 1992 six $SO_2$ monitoring sites operated. One site was removed June 1992. In 1993, the enhanced monitoring network added eight additional $SO_2$ sites. In 1997, eight $SO_2$ sites were removed from the network, thereby leaving five (Microwave, McClellan Creek Road #4, McClellan Creek Road #6, Water Tank, Kennedy Park) $SO_2$ monitoring sites in the East Helena area. These five remaining sites, together making up the "enhanced monitoring network," were located in areas of historic violations and modeled maximum pollutant impact areas.

[35] The data collected in 2001 did not meet data completeness owing to the ASARCO facility shutdown in April 2001, after which the monitoring network was discontinued in June 2001.

[36] *See* EPA Memo "Section 107 Questions and Answers," G.T. Helms, December 23, 1983, in the docket for this action.

[37] 40 CFR 50.4.

[38] *See* East Helena $SO_2$ Redesignation Request and Maintenance Plan, at 8.

[39] The EPA is not including emissions from the American Chemet facility, which is located within the East Helena $SO_2$ NAA, because this facility has not emitted a ton of $SO_2$ in any single year since 1990.

TABLE 2—EMISSIONS DATA FOR $SO_2$ SOURCES[40] IN AND NEAR THE EAST HELENA $SO_2$ NAA

| Year | ASARCO emissions | Ash Grove emissions | Percentage of total emissions from ASARCO |
|---|---|---|---|
| 1996 | 10,181.97 | 102.88 | 99.0 |
| 1997 | 10,246.02 | 96.78 | 99.1 |
| 1998 | 9,797.69 | 95.7 | 99.0 |
| 1999 | 9,819.84 | 240.89 | 97.6 |
| 2000 | 9,957.31 | 229.23 | 97.7 |

As shown in Table 2, the Ash Grove Cement plant (''Ash Grove'') contributed less than 2.5% of total emissions in or near the East Helena NAA area in each of the final five years of complete ambient $SO_2$ monitoring. Ash Grove is located outside the geographic boundary of the East Helena $SO_2$ NAA, at a distance of 3 km to the south of the NAA's southern boundary and remains in operation. Ash Grove's allowable $SO_2$ emissions are limited to 386 tpy by its MAQP #2005–13 and Title V operating permit #OP2005–09.[41] Based on the emissions data provided above, and consistent with our past conclusions regarding the East Helena NAA,[42] the EPA proposes to concur with MDEQ's assertion that ASARCO emitted nearly all of the $SO_2$ in the East Helena area prior to its 2001 shutdown, and to concur with the State that monitored $SO_2$ concentrations in the area would have decreased substantially following the ASARCO shutdown.

As Montana submitted the East Helena $SO_2$ Redesignation Request to the EPA on October 26, 2018, contemporaneous ambient $SO_2$ monitoring data was not available due to the discontinuation of the East Helena monitoring network on May 31, 2001. Generally, for a redesignation, the *most recent* eight quarters of ambient monitoring data must show compliance with the NAAQS.[43] For this reason and based on the recommendations of applicable guidance discussed further below, the EPA also found it appropriate to review available air quality modeling to complete our determination of attainment analysis.

b. Review of Air Quality Modeling Data

Generally, for redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has attained the applicable NAAQS.[44] For some pollutants, this determination relies solely on air quality monitoring data. However, for $SO_2$, monitoring data alone is generally insufficient to assess an area's attainment status. The EPA's Calcagni Memo states that for $SO_2$ and specified other pollutants, ''dispersion modeling will generally be necessary to evaluate comprehensively sources' impacts.'' Typically, attainment planning for $SO_2$ involves dispersion modeling used to demonstrate that the emission limits adopted by the state suffice to assure attainment. With such modeling available, the EPA can generally determine an area to be attaining the standard without further modeling, provided monitoring data also support that determination. As noted, dispersion modeling was provided by the State and ASARCO and approved by the EPA to show attainment of the primary, but not secondary, $SO_2$ NAAQS. Because the EPA has approved Montana's primary $SO_2$ NAAQS dispersion modeling and attainment demonstration but has not received a secondary $SO_2$ NAAQS dispersion modeling and attainment demonstration from the State, we cannot rely on dispersion modeling as the sole basis for redesignation. Therefore, we have combined our analysis of monitoring and emissions data, listed above, with the modeling data discussed here to reach our proposed conclusion that the East Helena $SO_2$ NAA currently attains the 1971 $SO_2$ primary and secondary NAAQS.

In 1992, after promulgation of the CAA Amendments of 1990, MDEQ, ASARCO, and the EPA had been working together through compliance schedules and work plans to address issues found with early modeling studies to predict the ambient impacts of $SO_2$ emissions from the ASARCO smelter. These model results indicated that the NAAQS were violated when the facility operated at allowable emissions limits. Modeling results predicted $SO_2$ exceedances in two areas to the south and southeast of the smelter. The EPA concluded from these early modeling runs that there is an ambient $SO_2$ problem caused by ASARCO's emissions.[45] Consequently, ASARCO opted to establish an enhanced ambient monitoring network in the areas where initial modeling results indicated maximum $SO_2$ concentrations.

Based on the results of the early dispersion modeling, ASARCO developed an updated modeling protocol and refined dispersion modeling studies to demonstrate compliance with the primary $SO_2$ NAAQS. Control strategies to meet the NAAQS in this scenario included production and process limitations that would be put into place with the, as of that time, yet to be submitted East Helena primary $SO_2$ Attainment SIP approved by the EPA on January 27, 1995 (60 FR 5313).

The General Preamble of the Act details the EPA's interpretation of reasonably available control measures (RACM), including reasonably available control technology (RACT), requirements, and defines RACT for $SO_2$ as the control technology necessary to achieve the NAAQS.[46] As part of the EPA-approved ISCST and RTDM dispersion models used to predict ambient $SO_2$ concentrations around the ASARCO smelter, multiple modeling runs were performed to test $SO_2$ concentrations related to emissions from each stack. The results were then used to develop the emission limits and operating stipulations below for several of the major emission points of the ASARCO smelter.

From the modeling results, ASARCO developed a set of parameters for combined emissions of the two largest $SO_2$ emission points, the sinter and blast furnace stacks, in order to provide operating flexibility while still providing for attainment of both the annual and 24-hour primary $SO_2$

[40] *Ibid.*

[41] These permits are available in the docket for this proposed rulemaking action.

[42] As noted in the EPA's ''Establishment of Due Date for Sulfur Dioxide SIP for the Secondary NAAQS for East Helena, MT,'' ASARCO ''is the only major source of $SO_2$ emissions in the East Helena area.'' *See* 58 FR 52237, October 7, 1993.

[43] EPA Memo ''Section 107 Designation Policy Summary,'' Sheldon Meyers, April 21, 1983.

[44] CAA section 107(d)(3)(E)(i).

[45] ''Primary $SO_2$ NAAQS SIP Revision for East Helena, Montana, Technical Support Document, October 4, 1994.'' *See* Appendix E, October 9, 1992 letter from Douglas Skie to Jeffery Chaffee, with enclosure, discussing ASARCO's acceptance of the *de minimis* GEP height of 65 m for the blast furnace stack.

[46] 57 FR 13547, April 16, 1992; at 13560–13561.

NAAQS. These emissions compliance parameters were approved as a set of three linear equations [47] regulating the sinter stack and blast furnace stack daily $SO_2$ emissions. Per these parameters, the emissions rate from the sinter stack would limit the allowable emissions rate at the blast furnace to a level that provided for protection of the annual and 24-hour primary $SO_2$ NAAQS. If the sinter stack daily emissions fell within one of the three equation ranges, then the daily emissions of the blast furnace stack must not exceed a corresponding given value determined by that equation.

In addition to the compliance parameters developed for regulating combined emissions of the sinter and blast furnace stacks, maximum daily $SO_2$ emission limits were also established for these and other ASARCO emission points. The maximum allowable $SO_2$ emissions for the sinter and blast furnace stacks were set at 60.27 tons per calendar day and 29.64 tons per calendar day, respectively. Daily emissions of $SO_2$ from the double-contact sulfuric acid plant stack were not to exceed 4.30 tons per calendar day. ASARCO was required to operate continuous emission monitoring systems (CEMS) to determine compliance with the emission limitations for the sinter plant stack, blast furnace stack, and acid plant stack. $SO_2$ emissions from the concentrate storage and handling building stack (including the exhaust from the sinter plant ventilation system baghouse) were not to exceed 46 pounds per hour or 0.552 tons per calendar day.

The SIP-approved daily maximum emission limits, and also the compliance parameters for the combined emissions of the sinter and blast furnace stacks, went into effect September 1, 1994.[48] Two additional emission limitations on minor stack sources at the ASARCO smelter took effect on June 30, 1995; $SO_2$ emissions from the crushing mill baghouse stacks #1 and #2 were not to exceed 0.19 and 0.37 tons per calendar day, respectively.

As well as the aforementioned emission limitations, the EPA also imposed additional provisions [49] on ASARCO's operating stipulations to ensure that $SO_2$ emissions from miscellaneous volume and fugitive sources would not increase beyond their current levels. Moreover, ASARCO's previously approved catalyst screening maintenance procedures were prohibited.[50] As a result, sulfur dioxide emissions were no longer allowed to bypass the double-contact sulfuric acid plant for catalyst screening while the blast furnace was operating. The East Helena primary $SO_2$ Attainment SIP set the sunset date of the catalyst screening exemption as November 15, 1995. The above emissions limitations and stipulations imposed on ASARCO were incorporated into the control strategy that the EPA fully approved for the East Helena primary $SO_2$ Attainment Plan's RACM (including RACT) as attaining the primary $SO_2$ NAAQS by November 15, 1995.

In addition to these modeled emission rates for the ASARCO smelter, Ash Grove was also included in the modeling for Montana's East Helena $SO_2$ Attainment SIP. The facility was modeled at a constant rate of 28.71 grams/second, equivalent to 998 tpy of $SO_2$. As noted, Ash Grove's current allowable $SO_2$ emissions are limited to 386 tpy by MAQP #2005–13 and Title V operating permit #OP2005–09.[51]

The EPA's criteria for evaluation of the modeling and attainment demonstration was the most recent version (at that time) of the EPA's *Guideline on Air Quality Models* at 40 CFR part 51, Appendix W. Through the modeling provided, Montana demonstrated that the emission limits ensured compliance with both the 24-hour and annual primary NAAQS. The EPA determined that the modeling indicated that both primary $SO_2$ NAAQS would be attained by November 15, 1995, thereby complying with the attainment date stipulated in the CAA Amendments of 1990. The ASARCO modeling and the East Helena primary $SO_2$ Attainment SIP were approved by the EPA on January 27, 1995 (60 FR 5313).[52]

As noted in our January 27, 1995 approval of the East Helena primary $SO_2$ Attainment SIP (and elsewhere in this notice), the State of Montana was to provide the EPA with its 3-hour secondary NAAQS Attainment SIP in a forthcoming submittal. This was due to issues with compliance with the NAAQS, as discussed further below. After the promulgation of the CAA Amendments of 1990, the State of Montana was to provide modeling as part of an attainment demonstration showing compliance with the secondary 3-hour $SO_2$ NAAQS. Due to early modeled NAAQS violations, ASARCO elected to perform additional dispersion modeling using CTDMPLUS/ISCST2 and CTSCREEN models, and control strategy evaluations to show attainment with the secondary $SO_2$ NAAQS. Additionally, an enhanced meteorological monitoring network (to include doppler SODAR) was established to collect data for the complex CTDMPLUS dispersion model. Despite these efforts, the required submittal (including the modeled attainment demonstration) never materialized before the ASARCO smelter ceased operations in 2001.

As discussed earlier in this notice, ASARCO determined that the allowable emission rates modeled to achieve the primary 1971 $SO_2$ NAAQS in the East Helena primary $SO_2$ Attainment SIP would need to reduce emissions an additional 35 percent to achieve modeled compliance with the secondary $SO_2$ NAAQS. In our October 7, 1993 ''Deadline for SIP Submittal'' action, we noted that the substantial emissions reductions required to model attainment of the secondary $SO_2$ NAAQS cannot reasonably be achieved through production or process changes. ASARCO estimated that if production were reduced by 35 percent, annual revenue would be reduced by more than $12.4 million. ASARCO contended that such a reduction in revenue would make continued operation of the East Helena smelter economically infeasible. Though the EPA could not confirm the projected level of revenue loss, we noted that the economic impact to the industry and the community would be significant. We agreed with the State of Montana and ASARCO that the only feasible way to meet the secondary $SO_2$ NAAQS, based on modeling results, would be to install new air pollution control equipment or new process technologies.[53] Because Montana failed to submit the required secondary $SO_2$ NAAQS SIP, highway and offset sanctions were imposed by operation of law pursuant to a finding of failure to submit for a designated nonattainment area (42 U.S.C. 7509(a)(1)) on December 16, 1993.[54]

Considering ASARCO's estimate (based on dispersion modeling) [55] that

[47] ''Primary $SO_2$ NAAQS SIP Revision for East Helena, Montana, Technical Support Document, October 4, 1994,'' at 20.

[48] 60 FR 5313, January 27, 1995.

[49] ''Primary $SO_2$ NAAQS SIP Revision for East Helena, Montana, Technical Support Document, October 4, 1994,'' at 21.

[50] During catalyst screening maintenance, $SO_2$ that would normally be transformed into sulfuric acid and recovered as a product, instead was bypassing the acid plant pollution controls and was directly emitted to the atmosphere. *See* 49 FR 18482, May 1, 1984.

[51] These permits are available in the docket for this proposed rulemaking action.

[52] ''Primary $SO_2$ NAAQS SIP Revision for East Helena, Montana, Technical Support Document, October 4, 1994.'' *See* C. Dispersion Modeling and Attainment Demonstration, at 16.

[53] 58 FR 52237, October 7, 1993.

[54] *See* EPA's January 19, 1994 letter to Montana Governor Racicot in the docket for this action.

[55] 58 FR 52237, October 7, 1993.

an additional 35 percent emissions reduction would be necessary to meet the secondary $SO_2$ NAAQS, the EPA concludes that this level of reduction was far surpassed by the ASARCO shutdown. ASARCO's maximum allowable $SO_2$ emissions were permitted at 18,773 tpy when the EPA determined that this level of control was sufficient to attain the 1971 primary $SO_2$ NAAQS, and thus approved the East Helena primary $SO_2$ Attainment SIP.[56] As noted, Ash Grove was also included in this attainment modeling, with a modeled constant emission rate of 28.71 grams per second, equivalent to 998 tpy of $SO_2$. Hence, an additional reduction of 6,570.5 tpy (35 percent of 18,773) of $SO_2$ from ASARCO, or estimated allowable emissions 12,202.5 tpy, should suffice to meet the secondary $SO_2$ NAAQS even if Ash Grove were to emit 998 tpy of $SO_2$ annually, over 2.5 times current Ash Grove allowable emissions. The current allowable emissions in the East Helena area are 386.09 tpy of $SO_2$ (See Table 3), just 3 percent of the estimated allowable rates sufficient to attain the secondary $SO_2$ NAAQS. On this basis, the EPA is proposing to conclude that the modeling performed as part of the East Helena primary $SO_2$ Attainment SIP, considered alongside current allowable emissions in the East Helena area and the attaining monitoring listed in Table 1, demonstrate that the East Helena area is attaining the 3-hour secondary $SO_2$ NAAQS.

As will be discussed further in the EPA's review of 107(d)(3)(E) criteria 2 and 5, the EPA's longstanding interpretation of the nonattainment planning requirements of CAA section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before the EPA can redesignate the area. The EPA is proposing to reach a similar conclusion regarding the State's outstanding requirement to submit to the EPA a 3-hour secondary NAAQS Attainment SIP. Specifically, because the EPA is proposing to conclude that the East Helena NAA is currently attaining the 3-hour secondary $SO_2$ NAAQS, the State is not required to also submit a SIP providing for such attainment.

c. EPA's Proposed Determination of Attainment

As discussed above, the normal prerequisite for redesignation of a nonattainment area is submittal of quality-assured ambient data with no violations of the NAAQS for the most recent eight consecutive quarters.[57] Generally, a modeling demonstration is also necessary for $SO_2$ nonattainment areas seeking to redesignate.[58] The Seitz Memo recognizes that states should be provided an opportunity to request redesignation for areas where there is no contemporary monitoring data available if there is no reasonable basis for assuming that $SO_2$ violations persist after closure of the sources that were the cause of these violations.[59] We find that East Helena is such an area, and that available monitoring and modeling data discussed above also indicate current attainment of both the primary and secondary 1971 $SO_2$ NAAQS. We therefore propose to determine that the East Helena NAA is attaining the primary and secondary 1971 $SO_2$ NAAQS.

2. Criteria (2)—Montana Has a Fully Approved SIP Under Section 110(k); and Criteria (5)—Montana Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment under a NAAQS, the CAA requires the EPA to determine that the state has met all applicable requirements for that NAAQS under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for that NAAQS for the area (CAA section 107(d)(3)(E)(ii)). The EPA proposes to find that Montana has met all applicable SIP requirements for the East Helena $SO_2$ NAA under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, the EPA proposes to find that the Montana SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, the EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for the 1971 $SO_2$ NAAQS for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, the EPA ascertained which requirements are applicable to the East Helena $SO_2$ NAA and, if applicable, that they are fully approved under section 110(k).

a. The East Helena $SO_2$ NAA Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, the EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. The EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, the EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, the EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable

[56] ASARCO's enforceable $SO_2$ emission limits have been comprised of permit limits and SIP-approved limits. ASARCO's MAQP $SO_2$ emission limit was 18,733 tpy before the permit was revoked in 2010. The East Helena primary $SO_2$ Attainment SIP further strengthened ASARCO's $SO_2$ emissions limits as discussed in detail above. All of ASARCO's emission limits, be they SIP-approved or permitted, are enforceable. Had ASARCO operated at its daily maximum emission limits as a constant yearlong rate, doing so would have violated the MAQP emission limit and the enforceable compliance parameters. The daily maximum emission limit was never intended as a constant maximum allowable emission rate. Rather, the 1995 primary $SO_2$ Attainment SIP emission limits and operating stipulations were developed to provide ASARCO with maximum operating flexibility.

[57] Helms Memo at 1.

[58] Calcagni Memo at 3.

[59] Seitz Memo at 1.

requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7,1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Title I, Part D, Applicable SIP Requirements

Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 5 of part D, which includes section 191 and 192 of the CAA, establishes requirements for $SO_2$, nitrogen dioxide and lead nonattainment areas. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Subpart 5 Section 172 Requirements

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the NAAQS. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements.

The EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before the EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, the EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). The EPA noted that the requirements for Reasonable Further Progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memo. The EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to $SO_2$ in the 2010 $SO_2$ NAA Guidance and suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld the EPA's interpretation of section 172(c)(1) for ''reasonably available'' control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). But see *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015).

Therefore, because attainment has been reached in the East Helena $SO_2$ NAA, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the ''applicable implementation plan'' required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). The other section 172 requirements that are designed to help an area achieve attainment—the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS—are also not required to be approved as part of the ''applicable implementation plan'' for purposes of satisfying CAA section 107(d)(3)(E)(ii).[60]

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The East Helena primary $SO_2$ Attainment SIP contained an inventory which the EPA approved as meeting the requirements of CAA section 172(c)(3).[61] This inventory reported annual $SO_2$ emissions for the ASARCO facility at approximately 18,000 tpy, with approximately 280 tpy attributed to the Ash Grove kiln stacks. The more contemporary emissions inventory submitted as part of the maintenance plan for the East Helena $SO_2$ NAA will be discussed further in the maintenance plan portion of this proposed action.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The EPA has a longstanding interpretation that because Nonattainment NSR (NNSR) is replaced by PSD upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Montana currently has a fully-approved PSD and part D NNSR program in place at Administrative Rules of Montana (ARM) Subchapter 8. Montana's PSD program will become effective in the East Helena $SO_2$ NAA upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the EPA believes the Montana SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to

[60] The EPA notes that MDEQ has met the requirements of CAA section 172(c)(1), (2), (6), and (9) for the 1971 primary $SO_2$ NAAQS, but not for the 1971 secondary $SO_2$ NAAQS. 60 FR 5315, January 27, 1995.

[61] 60 FR 5315, January 27, 1995.

the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA.

Montana has an approved general conformity SIP for the East Helena area. *See* 67 FR 62392 (October 7, 2002). Moreover, the EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

For these reasons, the EPA proposes to find that Montana has satisfied all applicable requirements for purposes of redesignation of the East Helena $SO_2$ NAA under section 110 and part D of title I of the CAA.

b. The East Helena $SO_2$ NAA Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

The EPA has fully approved the applicable Montana SIP for the East Helena $SO_2$ NAA under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. As indicated above, the EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. The EPA has approved all part D requirements applicable under the 1971 $SO_2$ NAAQS, as identified above, for purposes of this redesignation.

3. Criteria (3)—The Air Quality Improvement in the East Helena $SO_2$ NAA Is Due to Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). The EPA proposes to find that Montana has demonstrated that the observed air quality improvement in the East Helena $SO_2$ NAA is due to permanent and enforceable reductions in emissions. Specifically, the EPA considers the shutdown of the ASARCO smelter, identified as the cause of $SO_2$ NAAQS violations,[62] to be both permanent and enforceable due to the source's dismantling and permit revocation. The EPA notes that the ASARCO smelter was still operating during the 1987–2001 period during which the 1971 primary and secondary $SO_2$ NAAQS was attained across the East Helena enhanced monitoring network. Due to the ASARCO shutdown, the EPA reasonably concludes that the 1971 $SO_2$ NAAQS would have and will continue to be attained by a far greater margin following the facility's shutdown. As stated in the Calcagni Memo, ''Emission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.'' [63] As noted, MDEQ revoked ASARCO's MAQP #2557–12 on January 5, 2010, and the source's Title V permit #OP2557–04 expired on April 4, 2007.[64] Further, the ASARCO facility has been demolished, making its future operation impossible and thus exhibiting the permanence of the emissions reductions in the nonattainment area. Any new sources seeking to operate within the East Helena NAA would first be required to demonstrate that their new $SO_2$ emissions would not interfere with attainment and maintenance of the 1971 (and 2010) $SO_2$ NAAQS.[65] Therefore, the EPA is proposing to find that the air quality improvement in the East Helena $SO_2$ NAA is due to permanent and enforceable reductions in emissions.

4. Criteria (4)—The East Helena $SO_2$ Nonattainment Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

To redesignate a nonattainment area to attainment, the CAA requires the EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the East Helena $SO_2$ NAA to attainment for the 1971 primary and secondary $SO_2$ NAAQS, MDEQ submitted a SIP revision to provide for the maintenance of these NAAQS for at least 10 years after the effective date of redesignation to attainment. As will be discussed in further detail in Section III.B., ''CAA Section 175A Requirements,'' the EPA is proposing to find that this maintenance plan for the area meets the requirements for approval under section 175A of the CAA.

*B. EPA Review of CAA Section 175A Requirements*

1. Maintenance Plan Requirements

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as the EPA deems necessary to assure prompt correction of any future $SO_2$ NAAQS violations. The Calcagni Memo provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan.[66]

As noted, the Seitz Memo provides maintenance plan guidance specific to nonattainment areas whose historic violations were caused by a major point source that is no longer in operation. The Seitz memo provides a path for such areas to justify exemption from

[62] 58 FR 52237, October 7, 1993.

[63] Calcagni Memo at 10.

[64] Permit revocation letter is included in the docket for this action.

[65] All 1971 $SO_2$ NAAQS will continue to apply in the East Helena $SO_2$ NAA (in addition to the 2010 $SO_2$ NAAQS) after redesignation to attainment unless further action is taken by the State requesting 1971 primary $SO_2$ NAAQS revocation. As stated in the 2010 $SO_2$ NAAQS promulgation, ''EPA is also providing that the annual and 24-hour NAAQS remain in place for any current nonattainment area . . . until the affected area submits, and EPA approves, a SIP with an attainment, implementation, maintenance and enforcement SIP which fully addresses the attainment and maintenance requirements of the new $SO_2$ NAAQS.'' See 75 FR 35581, June 22, 2010.

[66] Calcagni Memo at 8–13.

maintenance plan requirements of continued monitoring and describes how attainment and continued maintenance could be demonstrated in such areas. Based on our review of the East Helena $SO_2$ Redesignation Request and relevant past rulemaking actions,[67] the EPA finds that the East Helena $SO_2$ NAA is an appropriate area for application of the guidance laid out in the Seitz Memo. The EPA has therefore elected to assess the East Helena $SO_2$ Maintenance Plan based on the recommendations provided in the Seitz Memo, as discussed further below.

2. Review of the East Helena $SO_2$ Maintenance Plan in the Context of the Seitz Memo

In order to allow areas to qualify for redesignation to attainment, the Seitz Memo policy requires that the maintenance plan address otherwise applicable provisions, and include: (1) Emissions inventories representing actual emissions when violations occurred, current emissions and emissions projected to the 10th year after redesignation; (2) Dispersion modeling showing that no NAAQS violations will occur over the next 10 years and that the shut down source was the dominant cause of the high concentrations in the past; (3) Evidence that if the shut down source resumes operation, it would be considered a new source and be required to obtain a permit under the PSD provisions of the CAA; and (4) A commitment to resume monitoring before any major $SO_2$ source commences operation. The EPA will address these requirements individually, below.

a. Emissions Inventory

The Seitz Memo recommends a state's maintenance plan include emissions inventories representing actual emissions when violations occurred, current emissions and emissions projected to the 10th year after redesignation. Montana's East Helena $SO_2$ Maintenance Plan included both past actual and future projected attainment emissions inventories[68] for the East Helena $SO_2$ NAA. The two sources included in these inventories are the American Chemet Corporation (Chemet) and Ash Grove, despite the latter facility's location outside of the East Helena $SO_2$ NAA. MDEQ's future projected attainment inventory used Chemet's permitted allowable $SO_2$ limit of 0.09 tpy (per MAQP #1993–19) and Ash Grove's permitted allowable limit of 386 tpy, to calculate a total projection of 386.09 tpy of $SO_2$ emissions each year from 2017 to 2026. This attainment inventory is provided in Table 3, below, with actual emissions replacing the State's projected allowable limits for 2017. We conclude that the inventories provided by the State are complete, accurate, and consistent with applicable CAA provisions and the Seitz Memo.

The State also included historic emissions data for ASARCO and Ash Grove from 1990 to 2001.[69] Neither the State nor the EPA has emissions data available for these facilities prior to 1990, due to ASARCO's 2001 shut down and the passage of time. Therefore, there is not an inventory available that can provide actual emissions when violations occurred, as recommended by the Seitz Memo. We do not consider this to be an issue, as the historic emissions inventory provided by the State and our review of previous rulemaking actions for East Helena clearly show that the shut down source, ASARCO, was the cause of historic $SO_2$ violations.

TABLE 3—EAST HELENA $SO_2$ MAINTENANCE AREA PROJECTED ATTAINMENT INVENTORY

| Year | Ash grove | Chemet |
|---|---|---|
| 2017 | * 102 | * 0.02 |
| 2018 | 386 | 0.09 |
| 2019 | 386 | 0.09 |
| 2020 | 386 | 0.09 |
| 2021 | 386 | 0.09 |
| 2022 | 386 | 0.09 |
| 2023 | 386 | 0.09 |
| 2024 | 386 | 0.09 |
| 2025 | 386 | 0.09 |
| 2026 | 386 | 0.09 |

* Indicates actual emissions.

b. Dispersion Modeling

Past EPA policy memoranda on $SO_2$ redesignations have recommended dispersion modeling. Per the Seitz Memo, the purpose of such modeling analysis is to show that; (1) No $SO_2$ NAAQS violations presently occur or can be projected to occur during the next 10 years anywhere within the nonattainment area, and (2) point sources, which have since shut down, were the dominant sources contributing to high $SO_2$ concentrations in the airshed.[70] The State elected not to submit an updated dispersion modeling analysis to the EPA as part of the East Helena $SO_2$ Maintenance Plan. For this reason, the EPA is relying on the dispersion modeling conducted in coordination with ASARCO, the MDEQ, and the EPA in the 1990's as part of the East Helena primary $SO_2$ Attainment Plan, to make this two-part showing. An in depth discussion on this modeling is presented in section III.A.1., above.

The EPA finds that the dispersion modeling for the East Helena primary $SO_2$ Attainment Plan is adequate to make the two-part showing recommended by the Seitz Memo. First, the $SO_2$ limits relied upon to model attainment of the 1971 primary $SO_2$ NAAQS, and the additional 35 percent $SO_2$ reduction necessary to model attainment of the secondary $SO_2$ NAAQS, both projected annual ASARCO emissions above 10,000 tpy and Ash Grove emissions at 998 tpy. Because current allowable emissions in the East Helena area are just 386.09 tpy, we find this sufficient evidence that no violations presently occur or can be projected to occur during the next 10 years anywhere within the nonattainment area. Second, the information provided throughout today's proposed rulemaking, most notably Table 2, clearly demonstrate that ASARCO was the dominant source contributing to high $SO_2$ concentrations in the East Helena area. For these reasons, the EPA finds that the ambient $SO_2$ modeling requirement for redesignations and maintenance plans is met.

c. Permitting of New or Modified Sources

For the East Helena $SO_2$ NAA, the NNSR permit program responsibilities are held by MDEQ. MDEQ has longstanding, SIP-approved PSD and minor NSR permitting programs.[71] In conjunction with all SIP-approved requirements of MDEQ's SIP-approved PSD permitting program, the Source Impact Analysis requires ''[t]he owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region or any applicable maximum allowable increase over the baseline concentration in any area.'' [72]

Furthermore, in conjunction with all SIP-approved requirements of MDEQ's SIP-approved minor source permitting program, Conditions For Issuance or

[67] 60 FR 5315, January 27, 1995.

[68] East Helena $SO_2$ Redesignation Request and Maintenance Plan, October 26, 2018, at 13–14.

[69] Id. at 8.

[70] Seitz Memo at 3.

[71] ARM Title 17, Chapter 8, Subchapters 7, 8, 9 and 10.

[72] ARM 17.8.820.

Denial of Permit,[73] requires that, ''[a] Montana air quality permit may not be issued for a new or modified facility or emitting unit unless the applicant demonstrates that the facility or emitting unit can be expected to operate in compliance with the Clean Air Act of Montana and rules adopted under that Act, the Federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in ARM 17.8.767), and any applicable requirement contained in the Montana State Implementation Plan (as incorporated by reference in ARM 17.8.767), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.'' MDEQ is committed to continuing to implement its SIP-approved major and minor source permitting programs in the East Helena maintenance area to ensure that any new or modified (or reopened)[74] industrial source of $SO_2$ emissions will not cause or contribute to a subsequent $SO_2$ NAAQS violation in the area. Further, any appropriate changes to the ARM will be submitted to the EPA for approval as a SIP revision.

These programs will apply to any major source wishing to locate in the East Helena NAA once the it is redesignated to attainment. The MDEQ commitment to treat any major source in or near East Helena as ''new'' under the PSD program satisfies the preconstruction permit provision of the Seitz Memo as one of the prerequisites to redesignation.

d. Monitoring

In the East Helena $SO_2$ Maintenance Plan, the State requires installation of appropriate $SO_2$ monitoring for a minimum of three years if a major source of $SO_2$ attempts to locate within the East Helena $SO_2$ NAA and the source's modeling indicates that the $SO_2$ impacts are greater than 75 percent of the NAAQS including background to ensure that the NAAQS are adequately protected. Moreover, Montana's PSD program also requires that permit applicants conduct preconstruction monitoring to identify baseline concentrations. Together, these commitments address the monitoring provision of the Seitz Memo.

3. Review of Remaining Maintenance Plan Provisions

As discussed above, CAA section 175A sets forth the statutory requirements for maintenance plans, and the Calcagni and Shaver memos cited above contain specific EPA guidance. The only maintenance plan element not covered by the Seitz Memo is the contingency provision. CAA Section 175A provides that maintenance plans ''contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.''

The East Helena $SO_2$ Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the $SO_2$ NAAQS. MDEQ's current operating permit program places limits on $SO_2$ emissions from existing sources. Should an existing facility (such as Chemet) want to increase $SO_2$ emissions by 40 tpy or more, the facility would be subject to the PSD program. Should a new facility be constructed in the East Helena maintenance area, the facility would also be subject to PSD.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. The Calcagni Memo also states that a contingency plan must require that the state implement all measures contained in the part D nonattainment plan. Since all of the measures contained in the East Helena primary $SO_2$ Attainment Plan (which satisfied part D for the 1971 primary NAAQS) specifically addressed the ASARCO facility, the EPA does not find it reasonable to contain such measures in the East Helena $SO_2$ Maintenance Plan now that the facility does not exist. Additionally, the EPA is proposing to conclude that the projected allowable $SO_2$ emissions limits for the two remaining sources in the East Helena area (Ash Grove and Chemet) are protective of the NAAQS. For these reasons, the State's contingency plan focuses on ensuring that new sources or modifications of existing permitted sources are protective of the $SO_2$ NAAQS. We agree with the State that any new source planning to locate within the maintenance area or existing source proposing a significant[75] increase in $SO_2$ emissions would be subject to Montana's SIP-approved PSD and minor NSR permitting programs.[76] Thus, we find that MDEQ's permitting program is sufficient to track future air quality trends and to assure that the East Helena maintenance area will not violate the NAAQS. If Montana identifies the potential for a NAAQS violation through the permitting process, the State would be required to ascertain what measures must be taken to avoid the violation. We are therefore proposing to conclude that the East Helena $SO_2$ Maintenance Plan satisfactorily addresses the ''contingency plan'' requirement of CAA section 175A.

The EPA generally requires that a state continue ambient monitoring to meet the maintenance plan requirement for verification of continued attainment. However, the Seitz Memo provides the opportunity for redesignated areas to be exempt from continued ambient monitoring of maintenance areas when the dominant source of $SO_2$ in the area has shut down.[77] As discussed earlier in this proposed notice, we find that the East Helena $SO_2$ NAA's unique circumstances are appropriate for application of the Seitz Memo guidance. Therefore, we determine that in this instance, an exemption to continued monitoring would be appropriate. If today's action is finalized as proposed, MDEQ will not be monitoring to verify $SO_2$ NAAQS compliance in the East Helena area unless required by Montana's permitting program following the introduction of a new or modified source to the area. The state has provided evidence that $SO_2$ monitoring conducted between 1987 and ASARCO's shutdown in 2001 met the applicable NAAQS with no violations observed during that time (See Table 1). Additionally, due to the total removal of the ASARCO facility, the source of the $SO_2$ NAAQS violations have been eliminated. With ASARCO removed from the total $SO_2$ emissions in the East Helena area, available evidence indicates attainment will be met by a wide margin. We agree with MDEQ that maintenance of the $SO_2$ NAAQS in the East Helena $SO_2$ maintenance area can be tracked through updates to the emissions inventory and operating permit applications received for $SO_2$ emitting sources for verification of continued attainment.

*C. EPA's Proposed Conclusion*

Based on the EPA's analysis of the East Helena $SO_2$ Redesignation Request and Maintenance Plan, provided in

[73] ARM 17.8.749.

[74] The EPA does not foresee any new source operating within the boundaries of the East Helena NAA due to its Superfund designation, completed remediation activities to date, and institutional controls imposed on the East Helena Site (including future deed restrictions).

[75] Per 40 CFR 52.21(b)(23)(i), a net emissions increase or potential to emit of 40 tpy or greater is considered ''significant'' for $SO_2$.

[76] ARM Title 17, Chapter 8, Subchapters 7, 8, 9 and 10.

[77] Seitz Memo at 1.

sections III.A. and III.B., the EPA is proposing to determine that the State has met all applicable requirements of CAA sections 107(d)(3)(E) and 175A.

## IV. Proposed Action

After review and analysis of Montana's submittal, the EPA is proposing to redesignate the East Helena, Montana $SO_2$ NAA to attainment for the 1971 primary 24-hour and annual, and secondary 3-hour $SO_2$ NAAQS. The EPA is also proposing to approve the State's plan for continued maintenance and attainment of the 1971 primary 24-hour and annual, and secondary 3-hour $SO_2$ NAAQS in East Helena, Montana for ten years following redesignation to attainment.

## V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, 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 proposed to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: July 11, 2019.

**Gregory Sopkin,**

*Regional Administrator, EPA Region 8.*

[FR Doc. 2019–15111 Filed 7–16–19; 8:45 am]

**BILLING CODE 6560–50–P**

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2019–0320; FRL–9996–63–Region 8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Montana; East Helena Lead Nonattainment Area Maintenance Plan and Redesignation Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the Maintenance Plan, submitted by the State of Montana to the EPA on October 28, 2018, for the East Helena Lead (Pb) nonattainment area (East Helena NAA) and concurrently redesignating the East Helena NAA to attainment of the 1978 Pb National Ambient Air Quality Standard (NAAQS). The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 16, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–EPA–R08–OAR–2019–0320, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* 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.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** James Hou, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6210, *hou.james@epa.gov.*

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

## I. Background

The East Helena NAA is in southern Lewis and Clark County, and is defined as a rectangle that includes both the community of East Helena and unincorporated portions of southern Lewis and Clark County. On November 6, 1991 (56 FR 56694), the East Helena area was designated as nonattainment for the 1978 Pb NAAQS (1.5 μg/m³). This designation was effective on January 6, 1992 and required the State to submit a CAA, title I, part D Pb nonattainment state implementation plan (SIP) by July 6, 1993. On August 16, 1995, July 2, 1996 and October 20, 1998 the Governor of Montana submitted SIP revisions to meet the part D SIP requirements. The control plan submitted as part of the East Helena Pb attainment plan focused on limiting emissions from the ASARCO lead smelter, which comprised the majority of lead emissions in the NAA, as well as restricting emissions from the American Chemet Copper Furnace. These emission reductions were further assisted through the complete removal of lead in gasoline by 1995.

On April 4, 2001, ASARCO shut down its lead smelter operations, thereby eliminating 99.8 percent of all stationary source Pb emissions in the NAA. The facility's three large smelter stacks were dismantled in August 2009. On April 15, 2007, ASARCO's Title V permit expired, and ASARCO's Montana Air Quality Permit was revoked in September 2013. The former ASARCO site is currently an active Superfund site, with no development possible until cleanup has been completed.

On June 18, 2001 (66 FR 32760), the EPA partially approved and partially disapproved the State's part D SIP submittals, which satisfied the CAA's criteria for Pb nonattainment SIPs. In the June 18, 2001 action, the EPA also determined that the NAA had attained the 1978 Pb NAAQS, based on air monitoring data through the calendar year 1999. The monitoring data used to determine attainment of the NAAQS included data while the ASARCO facility was still operating.

## II. Requirements for Redesignation

*CAA Requirements for Redesignation of Nonattainment Areas*

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of title I of the CAA.

## III. Review of the Montana State Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans

*Criteria (1)—Has the East Helena NAA attained the applicable NAAQS?*

Under section 179(c)(1), the EPA has the responsibility for determining whether a nonattainment area has attained the Pb NAAQS. The EPA must make an attainment determination as expeditiously as practicable, but no later than 6 months after the attainment date for the area. On June 18, 2001, the EPA determined that the East Helena NAA attained the 1978 Pb NAAQS (66 FR 32763).

*Criteria (2)—Does the East Helena NAA have a fully approved SIP under Section 110(k) of the CAA?*

The EPA has approved the applicable Montana SIP for the East Helena NAA under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. The EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum [1] at p. 3) plus any additional measures it may approve in conjunction with a redesignation action. Following passage of the CAA of 1970, Montana has adopted and submitted, and the EPA has fully approved provisions addressing various SIP elements applicable for the 1978 lead NAAQS in the East Helena Pb NAA. See 66 FR 32760.

[1] September 4, 1992 memo from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

*Criteria (3)—Has the East Helena Pb NAA met all the applicable requirements under Section 110 and Part D of the CAA?*

General SIP Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Title I, Part D—Applicable SIP Requirements

Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1978 lead NAAQS were designated under Subpart 1 in accordance with the deadlines in Subpart 5. For purposes of evaluating this redesignation request, the applicable Subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in sections 172 and 176 can be found in the General Preamble for Implementation of title I. See 57 FR 13498 (April 16, 1992).

Subpart 1, Section 172—Requirements

Section 172 requires states with nonattainment areas to submit attainment plans providing for timely attainment and meeting a variety of other requirements. The EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before the EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, the EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. See 57 FR 13498,

13564 (April 16, 1992). The EPA noted that the requirements for reasonable further progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. Id. This interpretation was also set forth in the Calcagni Memorandum. The EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, reasonably available control measures (RACM), and contingency measures under section 172(c)(9).

As noted above, EPA already approved Montana's attainment plan for the Area. See 66 FR 32760 (June 18, 2001). Among other things, the approved attainment plan satisfied the section 172(c)(1) requirements for RACM; 172(c)(2) requirements related to RFP; 172(c)(3) requirements for an emissions inventory; 172(c)(6); and 172(c)(9) requirements for contingency measures.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The 1990 CAA Amendments contained revisions to the NSR program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The CAA requires states to amend their SIPs to reflect these revisions but does not require submittal of this element along with the other SIP elements. The CAA established June 30, 1992, as the submittal date for the revised NSR programs (Section 189 of the CAA). Montana has a fully approved nonattainment NSR program, most recently approved on July 18, 1995 (60 FR 36715) at Administrative Rules of Montana (ARM) Subchapter 8. Montana also has a fully approved PSD program, most recently approved on July 18, 1995 (60 FR 36715). Upon the effective date of redesignation of an area from nonattainment to attainment, the requirements of the Part D NSR program will be replaced by the PSD program and the maintenance area NSR program.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the Montana SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 172(c)(8) allows a state to use equivalent modeling, emission inventory, and planning procedures if such use is requested by the state and approved by the EPA. Montana has not requested the use of equivalent techniques under section 172(c)(8).

Section 176—Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA. In light of the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. See 73 FR 66964 (November 12, 2008).

*Criteria (4)—Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?*

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). The EPA has determined that Montana has demonstrated that the observed air quality improvement in the East Helena NAA is due to permanent and enforceable reductions in emissions.

In the EPA's June 18, 2001 approval of the State of Montana's attainment plan (66 FR 32760), three major sources of Pb were identified in the East Helena NAA: The ASARCO Smelter complex; re-entrained dust from the roads of East Helena; and the American Chemet Corporation's copper oxide manufacturing facility. The East Helena attainment plan contained Pb control measures for these three sources, needed to attain the NAAQS to satisfy the section 172(c) RACM requirement. The EPA approved these controls as RACM/reasonably available control technology (RACT) and incorporated them into the SIP, making them permanent and enforceable SIP measures to meet the requirement of the CAA and the 1978 NAAQS. See (66 FR 32760).

On April 4, 2001, ASARCO shut down its lead smelter operations, thereby eliminating the largest source of Pb emissions in the NAA. The facility's three large smelter stacks were dismantled in August 2009. On April 15, 2007, ASARCO's Title V permit expired, and the ASARCO Montana Air Quality Permit was revoked in September 2013. With the removal of ASARCO lead smelter emissions, more than 99.8 percent of the lead emissions from all stationary sources in the NAA were permanently removed.

On June 10, 2013, the State of Montana submitted a request to remove stipulations limiting the allowable concentration of lead in raw feed at the American Chemet Corporation's East Helena facility. In order to approve the SIP revision, the EPA requested that the Montana Department of Environmental Quality (MDEQ) provide modeling to demonstrate noninterference with the attainment and maintenance of the Pb NAAQS and that the State finalize the revocation of ASARCO's permit. The EPA subsequently approved the requested SIP revision after the revocation of ASARCO's permit and after modeling showed a Pb concentration for the NAA of 0.14 $\mu g/m^3$. This modeled concentration is an order of magnitude lower than the applicable 1978 Pb NAAQS (1.5 $\mu g/m^3$). See 83 FR 13196. Due to the closure of ASARCO, and based on recent modeling for the NAA, the EPA considers the Pb emission reductions in the NAA to be permanent and enforceable.

*Criteria (5)—Does the area have a fully approved maintenance plan pursuant to Section 175A of the CAA?*

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. See CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the East Helena Pb NAA to attainment for the 1978 Pb NAAQS, MDEQ submitted a SIP revision to provide for maintenance of the 1978 Pb NAAQS for at least 10 years after the

effective date of redesignation to attainment. The EPA believes that this maintenance plan meets the requirements for approval under section 175A of the CAA.

Maintenance Plan Requirements

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as the EPA deems necessary to assure prompt correction of any future 1978 lead violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. As is discussed more fully below, the EPA has preliminarily determined that Montana's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Montana SIP.

Attainment Emission Inventory

The State of Montana submitted to the EPA emissions inventories for the East Helena NAA as part of their attainment plan that identified a level of emissions in the NAA that would be sufficient to attain the 1978 Pb NAAQS. As noted above, the EPA approved the attainment plan and determined that the area had attained the 1978 Pb NAAQS on June 18, 2001 (66 FR 32760). The controlled emissions inventory for ASARCO and American Chemet were 64.7 tons per year (tpy) and 0.0615 tpy, respectively.

Maintenance Demonstration

A state may generally demonstrate maintenance of the 1.5 μg/m$^3$ standard by either showing that future Pb emissions will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the 1978 Pb NAAQS. The demonstration should be for a period of ten years following the redesignation, *e.g.,* until 2028 for the maintenance plan update. The state demonstrates attainment of the standard using the attainment inventory since it is based on maximum permitted allowable emissions and Pb emissions are not expected to increase over the maintenance period. As a result of the closure of the major source of Pb emissions in the NAA, current Pb emissions in the Montana Maintenance Plan emission inventory represent less than 1 percent of the 1995 control plan stationary source emissions.

Further, on March 28, 2018, the EPA approved revisions to the East Helena Pb portion of the Montana SIP, submitted on September 13, 2013, which relied on dispersion modeling. Dispersion modeling is a more sophisticated means of demonstrating maintenance because it incorporates meteorology, topography, and source characteristics in addition to permitted allowable emissions rates. The EPA reviewed the supplied modeling analysis and agreed that the methodology was done in accordance with 40 CFR part 51, Appendix W and the EPA's ''Guideline on Air Quality Models.'' The AERMOD modeling analysis, conducted in accordance with Appendix W and the Guideline on Air Quality Models, used the emission limits in the SIP, located in Condition II.A.4.b of the 1995 Board Order, of 0.007 lb/hr and the results show a concentration of 0.14 μg/m$^3$ (which includes background concentrations).Therefore, East Helena is below the Pb NAAQS threshold for the applicable 1978 Pb NAAQS of 1.5 μg/m$^3$. The submitted modeling analysis used background concentrations of lead based off lead monitoring results that were performed during the three quarters immediately after the ASARCO facility ceased operations in April of 2001 (See 83 FR 1602). No significant changes in modeling inputs have occurred since the September 11, 2013 submittal and none are anticipated through the maintenance period. Therefore, the EPA finds that Montana has demonstrated maintenance of the 1978 Pb NAAQS.

Monitoring Network and Verification of Continued Attainment

Following the EPA's June 18, 2001 determination of attainment for the 1978 Pb NAAQS for the East Helena NAA, and the permanent removal of Pb emission in the area due to ASARCO's closure, MDEQ discontinued the operation of all Pb monitors in the NAA. MDEQ has confirmed that the State commits to resume monitoring before any major source of Pb commences to operate. If a new major source of Pb locates within the East Helena NAA and the source modeling indicates that the Pb impacts are greater than 75 percent of the current NAAQS including background, the source will be required to install appropriate Pb monitoring for a period of no less than three years to assure that the current NAAQS are adequately protected within the NAA. Moreover, Montana's PSD program requires that permit applicants conduct preconstruction monitoring to identify baseline concentrations. Notably, the applicable NAAQS that a major Pb source be evaluated against, would be for the more stringent and current 2008 Pb NAAQS of 0.15 μg/m$^3$ as opposed to the 1978 NAAQS of 1.5 μg/m$^3$.

Contingency Provisions

The East Helena NAA Pb Maintenance Plan includes the State's commitment to continue to implement and enforce measures necessary to maintain the Pb NAAQS. MDEQ's current operating permit program places limits on Pb emissions from existing sources. Should an existing facility (such as Chemet) want to upgrade or increase Pb emissions, the facility would be subject to the PSD program. Should a new facility be constructed in the East Helena maintenance area, the facility would also be subject to PSD as required in the Calcagni Memo. If these measures prove insufficient to protect against exceedances of the NAAQS, the State of Montana has also committed to adopt, submit as a SIP revision, and implement expeditiously any and all measures needed to ensure maintenance of the NAAQS.

The Calcagni Memo emphasizes the importance of specific contingency measures, schedules for adoption, and action levels to trigger implementation of the contingency plan. Since there are no major sources of Pb emissions remaining in the NAA from the original 1995 East Helena Pb Attainment SIP, ambient Pb monitoring was discontinued in 2001 when ASARCO shut down and the State's contingency plan will focus on new sources or modifications of existing permitted sources, we conclude that the State's commitment satisfactorily addresses the CAA provisions.

Since there are neither significant Pb sources nor ambient Pb monitoring in the East Helena maintenance area, we agree with the State that any new source planning to locate within the maintenance area or existing source proposing a significant increase in Pb emissions would be subject to Montana's SIP-approved major NSR and

minor source permitting programs.[2] Thus, we find that MDEQ's permitting program is sufficient to track future air quality trends and to assure that the East Helena maintenance area will not violate the NAAQS. If the State identifies the potential for a NAAQS violation through the permitting process, the State would ascertain what measures would be needed to avoid the violation.

Has the State met transportation and general conformity requirements?

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA. In light of the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. See 73 FR 66964 (November 12, 2008).

## IV. Proposed Action

After review and analysis of Montana's submittal, the EPA is proposing to take the following actions pursuant to section 110 of the CAA: Redesignate the East Helena, Montana Pb nonattainment area to attainment for the 1978 Pb NAAQS; and approve Montana's October 28, 2018 SIP revision for continued maintenance and attainment of the 1978 Pb NAAQS in East Helena, Montana.

## V. Statutory and Executive Order Reviews

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

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

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

## List of Subjects in 40 CFR Part 52

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

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

Dated: July 11, 2019.

**Gregory Sopkin,**

*Regional Administrator, EPA Region 8.*

[FR Doc. 2019–15107 Filed 7–16–19; 8:45 am]

BILLING CODE 6560–50–P

[2] ARM Title 17, Chapter 8, Subchapters 7, 8, 9, and 10.

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

**[EPA–HQ–OAR–2019–0136; FRL–9996–54–OAR]**

**RIN 2060–AU42**

## Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of public hearing.

**SUMMARY:** The EPA is announcing a public hearing to be held in Ypsilanti, MI on July 31, 2019 for the proposed rule ''Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes.'' This proposed rule will be published separately in the **Federal Register**. The pre-publication version of this proposal can be found at *https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard.* In the separate notice of proposed rulemaking, EPA has proposed amendments to the renewable fuel standard program regulations that would establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced in the U.S. or imported in the year 2020. In addition, the separate proposal includes a proposed biomass-based diesel applicable volume for 2020, a response to the remand of the 2016 standard-setting rulemaking, and several regulatory changes to the Renewable Fuel Standard (RFS) program including new pathways, flexibilities for regulated parties, and clarifications of existing regulations.

**DATES:** The public hearing will be held on July 31, 2019 at the location noted below under **ADDRESSES**. The hearing will begin at 9:00 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should

notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by July 25, 2019. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The hearing will be held at the following location: Ann Arbor Marriott Ypsilanti at Eagle Crest, 1275 S. Huron St., Ypsilanti, MI 48197 (phone number 734–487–2000). A complete set of documents related to the proposal will be available for public inspection through the Federal eRulemaking Portal: *http://www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2019–0136. Documents can also be viewed at the EPA Docket Center, located at 1301 Constitution Avenue NW, Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; Fax number: (734) 214–4816; Email address: *RFS-Hearing@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The proposal for which EPA is holding the public hearing will be published separately in the **Federal Register**. The pre-publication version can be found at *https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard.*

*Public hearing:* The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which can be found at *https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard*). The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period, as specified in the notice of proposed rulemaking.

**How can I get copies of this document, the proposed rule, and other related information?**

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0136. The EPA has also developed a website for the Renewable Fuel Standard (RFS) program, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: July 3, 2019.

**Christopher Grundler,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2019–15223 Filed 7–16–19; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 13–184; FCC 19–58]**

### Modernizing the E-Rate Program for Schools and Libraries

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes to make permanent the category two budget approach adopted in 2014 (the ''category two'' budget approach consists of five-year budgets for schools and libraries that provide a maximum amount of funding to support internal connections needed for Wi-Fi within school and library buildings). The Commission also seeks comment on potential modifications that could simplify the category two budget approach and decrease the administrative burden on schools and libraries, as well as how to transition to a permanent extension of the budget approach.

**DATES:** Comments are due on or before August 16, 2019 and reply comments are due on or before September 3, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 13–184, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Kate Dumouchel, Wireline Competition Bureau, (202) 418–1839 or TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 13–184; FCC 19–58, adopted on June 28, 2019 and released on July 9, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://www.fcc.gov/document/fcc-aims-speed-deployment-wi-fi-schools-and-libraries.*

**I. Introduction**

1. The Commission's E-Rate program is a vital source of support for connectivity to—and within—schools and libraries. In particular, the E-Rate program provides funding for internal connections, which are primarily used for Wi-Fi, a technology that has enabled schools and libraries to transition from computer labs to one-to-one digital learning. Today, we propose to make permanent the approach adopted by the Commission in 2014 to fund these internal connections. In so doing, we seek to ensure that our nation's students and library patrons have access to high-speed broadband and further the Commission's goal of bridging the digital divide.

2. The 2014 approach, known as the ''category two'' budget approach, consists of five-year budgets for schools and libraries that provide a set amount of funding to support internal connections. The Commission also established a five-year test period (from funding year 2015 to funding year 2019) to consider whether the category two budget approach is effective in ensuring greater access to E-Rate discounts for internal connections.

3. Our experience over the past few years suggests that these budgets have resulted in a broader distribution of funding that is more equitable and more predictable for schools and libraries. We also see clear improvements in the way in which funding for internal connections has been administered in the five-year period since adoption of the category two budget approach. Therefore, we now propose to make the

category two budget approach permanent and seek comment on potential modifications that could simplify the budgets, decrease the administrative burden of applying for category two services, and thereby speed the deployment of Wi-Fi in schools and libraries across the country.

**II. Discussion**

4. With the category two budget rules set to begin to expire for some applicants at the end of funding year 2019 and for all applicants at the end of funding year 2023, we are faced with a choice between continuing with the category two budget approach or returning to the two-in-five rules. Given our experience during the five-year test period and the Bureau's findings in the *Category Two Budget Report,* we (1) propose amending our rules to make permanent the category two budget approach for all applicants; (2) propose and seek comment on ways to improve the category two budget approach; and (3) seek comment on how best to transition from the five-year test period to a permanent extension of this approach.

5. First and foremost, we propose to permanently extend the category two budget approach and avoid reverting back to the two-in-five rules for all applicants. Doing so is consistent with the *Category Two Budget Report,* which generally found that the category two budget approach has provided schools and libraries with more certain and equitable funding for internal connections than under the two-in-five rules. In addition, making permanent the category two budget approach is also supported by the record received in response to the September *2017 Public Notice.* We, therefore, seek comment on our proposal to make permanent the category two budget approach and on the Bureau's overall findings in the *Category Two Budget Report.*

6. In particular, the *Category Two Budget Report* found that, under the category two budget approach, applicants have had access to category two funding every year, and no requests have been denied due to insufficient funding. By contrast, under the two-in-five rules approach, a small number of applicants exhausted available funding, with most applicants receiving no funding. Additionally, 43% of schools and 23% of libraries each year now receive category two funding as compared to 10% of applicants under the two-in-five rules. Moreover, the category two budget approach has generally resulted in a more equitable distribution of funding that better approximates the makeup of E-Rate applicants, in comparison to the distribution under the two-in-five rules approach where funding disproportionately went to urban schools. Category two support has been disbursed in all fifty states and five territories and to applicants at all discount levels. We seek comment on these and other findings in the *Category Two Budget Report* and on the proposal to permanently extend the category two budget approach.

7. We also seek comment on the costs and benefits associated with making permanent the category two budget rules. Do the benefits of the category two budget approach outweigh the burdens associated with administering them? We also seek comment more generally on the costs associated with the budgets overall and the appropriate path forward.

8. We propose extending several aspects of the current category two budget approach, including maintaining the eligibility of existing category two services and keeping the existing budget multipliers for schools and libraries. We also seek comment on other potential ways to improve the budget approach, including moving to district-wide budgets and simplifying the budget calculations. Finally, we seek general comment on ways to decrease the burden of applying for category two services and improve administration of category two budgets for both applicants and USAC.

9. *Eligible Services.* In 2014, the Commission made managed internal broadband services, caching, and basic maintenance of internal connections eligible for category two support under the category two budget approach through funding year 2019. For each service, the Commission found that the budgets allayed concerns about wasteful spending and provided applicants with greater flexibility to determine their own needs. Consistent with the Commission's determination in 2014 to make certain services eligible for category two support given the budgets' ability to prevent excessive spending, we propose extending the eligibility of managed internal broadband services, caching, and basic maintenance of internal connections under the permanent category two budget approach we propose today. We seek comment on this proposal. Further, are there additional services that we should make eligible for category two funding or any other issues regarding category two eligible services we should consider?

10. *Budget Levels.* In the *Category Two Budget Report,* the Bureau found that the category two budget approach appears to be sufficient for most schools and libraries with approximately half of schools and most libraries having used less than half of their allocated five-year budget and a supermajority of schools and libraries having used less than 90% of their budgets. Based on this finding, we propose maintaining the existing budget multipliers for the category two budget approach. Specifically, over a five-year funding cycle, schools would be eligible to receive up to $150 (pre-discount) per student and libraries are eligible to receive up to $2.30 or $5.00 (pre-discount) per square foot (depending on their Institute for Museum and Library Services (IMLS) locale codes). Entities with low student population or small square footage would receive a budget floor of $9,200 over five funding years. We recognize that student count, building age, geography and other factors vary from entity to entity, and as such, no budget multiplier will perfectly fit the category two budget needs for every school and library in the country. Nevertheless, we expect that, on balance, maintaining the existing multipliers will fit the needs of the majority of applicants.

11. We seek comment on this proposal or, in the alternative, whether to change these per-student or per-square foot budget multipliers, particularly for entities that may have participated at a lower rate or that may face higher costs for internal connections. For instance, we seek comment on whether the minimum budget floor should be increased and, if so, what the appropriate budget floor level should be to address the needs of smaller entities and increase their participation in the program. Would, for example, increasing the budget floor to $25,000 as some commenters suggested in response to the *2017 Public Notice* be a more appropriate budget floor? Based on requests from funding years 2015 to 2018, schools with an enrollment of 190 students or more participate at an 80% rate, which corresponds to a pre-discount budget of approximately $30,000, roughly three times the current funding floor, compared with those at the funding floor, which participate at a 48% rate. Would raising the budget floor to correspond with schools that participate at a higher rate be an appropriate budget floor level?

12. Similarly, we seek comment on whether to adjust the budget multipliers for entities that may experience higher costs due to their geographic location. For example, the current budget multipliers appear to disadvantage rural libraries, leaving them with less than half the category two budget support per square foot than their urban

counterparts despite often smaller square footage. Should we maintain the increased budget multiplier for libraries in urban areas (*i.e.,* $5.00 per square foot), or should we set a higher budget multiplier for rural libraries, which is currently $2.30 per square foot? Commenters should submit specific data and models to support their arguments that additional funding is necessary, including the relative importance of any particular factors such as rural or remote geography, building age, or low student population. For example, to the extent that entities in remote or Tribal areas or communities face higher category two costs, we seek data to assist the Commission in determining the appropriate budget multipliers.

13. *District-Wide or Library System-Wide Budget Calculations.* We seek comment on moving from a per-school or per-library budget to a per-district or per-system budget for category two services. In 2014, the Commission adopted per-entity budgets, requiring districts to calculate budgets for each school in the district based on the number of students in the school, and for library systems to calculate budgets for each of its library outlets based on the square footage of that outlet. Stakeholders have consistently commented on the administrative difficulties associated with managing these per-entity budgets. For instance, many school districts have buildings of different ages or construction materials, and therefore some entities end up with too large of a budget, while others end up with an insufficient budget. As such, stakeholders have recommended moving to a district-wide or library system-wide budget that is calculated using the total number of students in the district or all of the buildings in the library system. Under this approach, a district would calculate its category two budget and then decide how and where category two E-Rate support should be directed.

14. There are several potential benefits to this approach. First, as commenters contended in response to the *2017 Public Notice,* moving to a district-wide calculation would streamline the application process for category two services from start to finish, simplifying the budget calculations, the FCC Form 471 application, the PIA reviews of those applications, and the FCC Form 500 cancellation process. Such a calculation could also simplify some of the more complicated issues that applicants face when seeking E-Rate support. For example, a district-wide budget calculation could largely eliminate the number of applicants that estimate student counts at new schools if the number of students in the district is unchanged despite a new school being built. Similarly, would a district-wide budget calculation simplify the application process by eliminating the need for school districts to count part-time students given that they would have the flexibility to allocate funding as they see fit? Moreover, a district-wide calculation should simplify the review of applications where there are shared services by E-Rate eligible entities. Under the current approach, cost allocation between the budgets of the entities sharing the service is required, adding to the applicant burden. Finally, calculating budgets on a district-wide basis would afford local entities that are familiar with the needs of their schools the opportunity to leverage that knowledge in making determinations about the efficient and effective allocation of E-Rate funds in fulfillment of the program's objectives and goals. We seek comment on each of these potential benefits and how they would impact applicants. What are the other potential benefits that could be realized in using district-wide budgets?

15. We also seek comment on the costs of moving to district-wide budgets, including with respect to the allocation and distribution of category two funding. For instance, under a district-wide budget approach, there is a risk that fewer entities will receive category two E-Rate support if school districts elect to request funding only for certain schools. For example, in some states, charter schools are considered a part of a school district, while in others, they are independent from the district. For charter school applicants that are subject to school district administration, are there risks that category two E-Rate support requested by the school district will be unfairly distributed among the schools in the district? We seek comment on these risks and whether any safeguards could be used to ensure that funding is available for all eligible schools.

16. We also seek comment on how a district-wide budget approach should be administered. For example, how should applicants and USAC determine which entities are part of a district for purposes of applying for and setting district-wide category two budgets? In particular, some parochial schools and charter schools apply as a group for purposes of calculating a district-wide discount rate under the Commission's rules. Should we consider using a similar approach when setting district-wide budgets for these entities? Further, what would happen if districts combine or separate during the five-year budget cycle? Are there other issues we should consider, including any rules or procedures that would need to be modified, under a district-wide category two budget approach?

17. We also seek comment on whether the same approach is appropriate for library systems. In general, would library systems benefit from a system-wide budget in the same way schools might? Our rules also provide two budget multipliers for libraries (*i.e.,* $2.30 or $5.00 per square foot), depending on the library's IMLS locale code. Would this require a modification in order for all library outlets in a system to share the same locale code? If so, what is the best method for determining the locale code for a system? Are there any other administrative issues to consider in using a system-wide budget for libraries?

18. Finally, if we move to district-wide budgets, should we also consider easing the equipment transfer rules within a district? With the move to district-wide discounts and district-wide category two budgets, the original concerns that led to the adoption of a prohibition on equipment transfers for a period of three years after purchase—namely, that applicants might replace or upgrade their equipment more often than necessary or to circumvent the then-existent two-in-five rules—would no longer be relevant. We note, at the same time, that under section 54.516(a) of the Commission's rules, schools, libraries, and consortia are required to maintain asset and inventory records of equipment purchased and the actual locations of such equipment for a period of 10 years after purchase.

19. *Budget Calculations.* We seek comment on simplifying the budget calculations generally. For example, should the student count and square footage in the first year of a five-year cycle be used for all five years to ease administration of the budgets? The ability to obtain additional funding if there is a student population increase or new library building was designed to provide flexibility, but applicants have raised concerns about the difficulty of updating this information during the application review process. Would having a set pre-discount budget for five years make the review process easier because applicants would only have to verify this information once? Or are there significant advantages to having the budgets rise (or fall) depending on student population or square footage each year? If so, are there other ways to ease the review process for verifying student counts and square footage if we

keep entity-level budgets on an annual basis? Should we establish a presumption that the student counts verified in one of the last four funding years are still accurate for the purposes of setting a category two budget, absent an effort by the applicant to increase the student count? Such a presumption could result in waste of funding if a school's student population dropped significantly, for example, due to migration of students to a new school. How could such an outcome be avoided if we were to adopt such a presumption?

20. Similarly, we propose to codify rounding the inflation calculation to two decimals for the category two multipliers in funding year 2020. This approach will simplify the calculation for USAC and applicants and is consistent with other Commission rules that establish rounding. We seek comment on this proposal. Recognizing that applicants do not always know the inflation adjustment before the filing window, we also seek comment on whether there is a better way to adjust for inflation, such as adjusting the budgets just once every five years.

21. *Application and Administration.* We also seek comment on other ways to make the application process for category two services and the administration of category two budgets simpler and more efficient. What administrative changes would have the greatest impact on applicants and USAC? For example, we seek comment on whether there are ways to simplify how applicants request category two services on the FCC Form 471 and on whether the Commission should provide guidance on using master contracts for category two services. Additionally, are there changes to the FCC Form 500 cancellation process that would simplify the category two budget process?

22. We seek comment on the five-year budget cycles and how best to transition from the existing category two budget rules following the five-year test period. The category two budget rules currently contemplate rolling budgets; that is, each year applicants calculate the pre-discount budget based on the current funding year student counts and budget multipliers, and then subtract the pre-discount amounts on the commitments received in the prior four funding years. For instance, assume a hypothetical school with 1,000 students that first received category two funding in funding year 2015; its budget in funding year 2015 would be $150,000. If there is no change in student count, in funding year 2016, the school's budget would be $151,500, minus the pre-discount amount of any funding received in funding year 2015. In funding year 2017, the budget would be $153,469.50, minus the pre-discount amount of any funding received in funding years 2015 and 2016, and so forth through funding year 2019. If not for the five-year test period established in the *2014 Second E-Rate Order,* 80 FR 5961 (February 4, 2015), in funding year 2020, the school's budget would be the student count multiplied by the funding year 2020 budget multiplier, minus the pre-discount amount of any funding received in funding years 2016, 2017, 2018, and 2019; funding received in funding year 2015 would not count against the school's budget in funding year 2020. In this manner, the budgets were designed to be rolling, and an applicant could determine its budget by looking to its current student count, the current inflation-adjusted per-student budget multiplier, and the amount of funding received in the prior four funding years. The goal of this rolling approach is to provide applicants with greater certainty about whether funding would be available after the end of a five-year budget cycle and thus prevent unnecessary spikes in spending in the last year of such a cycle.

23. The five-year test period adopted in 2014, however, makes it such that no applicant is able to request funding in a sixth year under the category two budget approach, and thus although the budgets were designed to be rolling, in practice they are not. We seek comment on using rolling budgets as originally intended. Under this approach, in funding year 2020, applicants would calculate their five-year budgets based on their student counts, inflation-adjusted per-student budget multipliers, and any funding committed in in funding years 2016, 2017, 2018, and 2019 (but not funding year 2015). What are the other benefits of this rolling approach? What are the costs of this approach? For example, is it administratively burdensome to calculate budgets in this way?

24. As an alternative to a rolling five-year cycle approach, we seek comment on moving to a fixed five-year cycle from funding year 2020 through funding year 2024, with a new fixed five-year budget starting for all applicants every five years. Would a fixed five-year cycle be a more efficient and/or an easier-to-administer system than a rolling five-year cycle approach? How can applicants be incentivized to avoid wasteful spending at the end of a fixed cycle by requesting funds solely because the funds are scheduled to expire? What are the other costs and benefits of rolling and fixed budget cycles? We seek comment on these approaches and any alternatives.

25. If we were to use a rolling budget approach, should we consider modifying the rolling budgets to smooth the amount of support available over a five-year cycle by providing some funding each funding year? For instance, should we consider a system where an additional 20% is added to the applicant budget each year while still having a maximum budgeted amount that can be spent each year? Continuing with the illustration above of a school with 1,000 students, in the first year the school received funding, its budget would be $150,000. In the following year, the school's budget would be $151,500, minus the pre-discount amount of any funding received in the prior funding year, plus $30,300, which is 20% of the school's $151,500 budget. Under this additive approach, a school would be able to roll unused funding from year to year; however, applicants would not be permitted to request more than $150 per student (adjusted for inflation) in any given funding year. This approach would both allow applicants to either seek funding each year or carry the budget forward to the next year, and ensure that applicants always have access to at least some funding in every year. Because student counts can fluctuate, an applicant that sees a large decline in student population in one funding year could have a much smaller category two budget than previously anticipated. Using this additive approach of providing some portion of funding to the school each funding year could smooth that fluctuation. However, it could make tracking budgets more challenging. Specifically, under the current system, applicants calculate budgets using three variables (*i.e.,* their current student count, the inflation-adjusted per-student budget multiplier, and the amount of funding received in the prior four funding years) while applicants would have to track the added 20% each year, adding a fourth variable to their calculations each year. We seek comment on this additive approach, its costs and benefits, and any alternatives to smooth out the amount of support available under a rolling five-year budget approach while minimizing administrative burdens on applicants and USAC.

26. Further, we seek comment on how to transition from the existing category two budget rules to any modified category two budget rules. As described above, if we simply extend the current rules, in funding year 2020, an applicant's budget calculation would take into account funding requested in funding years 2016 through 2019. For administrative efficiency, however, we seek comment on starting fresh in funding year 2020 and resetting all applicant budgets, to allow applicants a new opportunity to track their category two budgets and ease the transition's impact on all E-Rate program stakeholders. We recognize, however, that some applicants have not requested all of their category two budgets from funding year 2015 through 2019, while others will have used all of their budgets for those years. We, therefore, also seek comment on whether there is an administratively feasible way to take previous category two funding commitments into account when transitioning all applicants in funding year 2020.

27. Alternatively, depending on the timing of the new rules and the extent of the changes, should we consider using funding year 2020 as a bridge to transition to the final rules we adopt in this proceeding? For example, should we consider extending the existing rules for one funding year without any modifications? This approach could allow applicants that received support in funding year 2015 and have completed the five-year cycle, or applicants still within their five-year cycles with funds remaining in their budgets, to request support and allow for a smoother transition to the new rules. Should we permit applicants who have completed a five-year cycle to nevertheless access any unused funds in funding year 2020, in what would be a sixth year? Similarly, should any particular restrictions apply to applicants that did not receive category two support in funding year 2015 through 2019? Should we further provide some additional category two support to the existing five-year budgets, for example, $30 per student or 20% of the library budget of $2.30 or $5.00? Commenters supporting this alternative are encouraged to also address what category two funding opportunities, if any, should be made for those E-Rate eligible entities who have already depleted their respective category two budgets. Or should we consider having a second, later filing window for category two service requests in funding year 2020? How can we best reduce applicant confusion and provide for simplified administration of the category two budgets as we move beyond funding year 2019? We seek comment on other alternatives that would afford a smooth and effective transition to the category two rules we adopt in the context of this proceeding.

## III. Procedural Matters

28. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

29. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, internet access, and internal connections.

30. Taking steps to close the digital divide is a top priority for the Commission. The E-Rate program provides a vital source of support to schools and libraries, ensuring that students and library patrons across the nation have access to high-speed broadband and essential communications services. The rules we propose in the *NPRM* seek to make permanent the category two budget approach for all E-Rate applicants beyond funding year 2019. We seek comment in the *NPRM* on streamlining and simplifying the administration of the E-Rate program for applicants, service providers, and the Universal Service Administrative Company. In addition, the rules that we propose or seek comment on in the *NPRM* would eliminate confusion over how to apply for category two services which provide connectivity within schools and libraries and include internal connections, basic maintenance of internal connections, and managed internal broadband services. We seek comment on our proposals as well as comments on other ways to lessen the administrative burden on participating schools and libraries within the framework of the category two budget approach.

31. The proposed action is authorized pursuant to sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

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

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

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

35. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

36. As noted, a ''small entity'' includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. A library includes ''(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library, and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.'' For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In funding year 2017, approximately 104,500 schools and 11,490 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 104,500 schools and 11,490 libraries might be affected annually by our action, under current operation of the program.

37. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange services. Of this total 1,307 an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

38. We have included small incumbent LECs in this RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have, therefore, included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

39. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to IXCs. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

40. *Competitive Access Providers (CAPs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under the SBA size standard, a Wired Telecommunications Carrier is a small entity if it employs no more than 1,500 employees. U.S. Census Bureau data for 2012 show that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to Commission data, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

41. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

42. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and

specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

43. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

44. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up internet service providers, VoIP service providers using client-supplied telecommunications connections and internet service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

45. *Vendors of Infrastructure Development or ''Network Buildout.''* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a size standard of 1,250 employees or less and ''Other Communications Equipment Manufacturing'' with a size standard of 750 employees or less.'' U.S. Census Bureau data for 2012 show that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012 shows that 383 establishments operated for the year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, we conclude that the majority of Vendors of Infrastructure Development or ''Network Buildout'' are small.

46. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated for the entire year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms can be considered small.

47. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

48. The proposals under consideration in the *NPRM,* if adopted, may result in new and/or modified reporting, recordkeeping and other compliance requirements for both small and large entities. At this time, the Commission cannot quantify the cost of compliance with the potential rule changes in the *NPRM,* but we anticipate that the result of any rule changes will produce requirements that are equal to or less than existing requirements, and we do not believe small entities will have to hire attorneys, engineers, consultants, or other professionals in order to comply. Moving from a per-school or per-library budget to a per-district or per-system budget for category two services, for example, would streamline the application process for category two services from start to finish, simplifying the calculation, the FCC Form 471 application, Program Integrity Assurance (PIA) reviews, and the FCC Form 500 cancellation process. Moreover, adopting this approach may also simplify some of the more complicated issues that applicants face when seeking E-Rate support. Additionally, to find other ways to reduce any administrative processes which could impact compliance costs, we have sought comment on how the application process for category two services can be made simpler and more efficient. Regarding our proposal to amend our rules to make permanent the

category two budget approach beyond funding year 2019 in five-year funding cycle increments, we have sought comment on whether the benefits associated with making permanent the category two budget rules outweigh the cost of compliance associated with administering them.

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

50. In the *NPRM,* we have taken steps to minimize the economic impact on small entities with the rule changes that we have proposed. Under the current E-Rate program, the category two budget rules will begin to sunset in funding year 2020. Absent a rule change, applicants seeking category two services will have to navigate two sets of rules until funding year 2024. We have therefore proposed amending the rules to make permanent the category two budget approach for all applicants beyond funding year 2019, which, if adopted, will remove the burden and the cost to small entities of having to navigate and comply with two different sets of rules. This proposal will also lessen the reporting requirements on small entities thereby lessening their administrative costs for report preparation. To further reduce the reporting and administrative requirements for small entities, we seek comment on moving to a district-wide or system-wide budget, rather than a school entity or library entity budget. We anticipate that permitting school districts and library systems to calculate a district-wide budget, rather than maintaining records and allocating costs between budgets for each school and library, may simplify the current application process by reducing the number of applications filed, reducing the paperwork burden for reporting student counts, and reducing the complexity of the budgets overall. The Commission expects to more fully consider ways to minimize the economic impact and explore alternatives for small entities following the review of comments filed in response to the *NPRM.*

51. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

52. *Paperwork Reduction Act.* The *NPRM* may result in revised information collection requirements. If the Commission adopts any revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

53. *Ex Parte Rules.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

54. *Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

55. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

## IV. Ordering Clauses

56. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201–202, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, and 303(r), this Notice of Proposed Rulemaking *is adopted*.

57. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

## Proposed Rule

For the reason discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

## PART 54—UNIVERSAL SERVICE

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

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

■ 2. Amend § 54.502 by revising paragraph (b), removing paragraph (c) and redesignating paragraph (d) as paragraph (c) to read as follows:

### § 54.502 Eligible Services.

* * * * *

(b) *Category Two Budgets.* Libraries, schools, or school districts with schools that receive funding for category two services pursuant to paragraphs (b)(1) through (6) of this section.

(1) *Five-year budget.* Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a five-year funding cycle beginning the first funding year support is received. Excluding category two support committed prior to funding year 2020, each school or library shall be eligible for the total available budget less the pre-discount amount of category two services commitments in the prior four funding years. The category two budget levels and the funding floor shall be adjusted for inflation annually in accordance with § 54.507(a)(2). Beginning in funding year 2020, the dollar amount shall be rounded to two decimal points. The increase shall be rounded to the nearest 0.01 by rounding 0.005 and above to the next higher 0.01 and otherwise rounding to the next lower 0.01.

(2) *School budget.* Each eligible school shall be eligible for support for category two services up to a pre-discount price of $150 per student (adjusted for inflation since funding year 2015) over a five-year funding cycle. Applicants shall calculate the student count per district at the time the discount is calculated each funding year. New schools may estimate the number of students but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) *Library budget.* Each eligible library located within the Institute of Museum and Library Services locale codes of ''11—City, Large,'' defined as a territory inside an urbanized area and inside a principal city with a population of 250,000 or more, ''12—City, Midsize,'' defined as a territory inside an urbanized area and inside a principal city with a population less than 250,000 and greater than or equal to 100,000, or ''21—Suburb, Large,'' defined as a territory outside a principal city and inside an urbanized area with population of 250,000 or more, shall be eligible for support for category two services, up to a pre-discount price of $5.00 per square foot (adjusted for inflation since funding year 2015) over a five-year funding cycle. All other eligible libraries shall be eligible for support for category two services, up to a pre-discount price of $2.30 per square foot (adjusted for inflation since funding year 2015) over a five-year funding cycle. Applicants shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor.* Each eligible school and library will be eligible for support for category two services up to at least a pre-discount price of $9,200 (adjusted for inflation since funding year 2015) over a five-year funding cycle.

(5) *Requests.* Applicants shall request support for category two services for each school or library based on the number of students per school building or square footage per library building. Category two funding for a school or library may not be used for another school or library. If an applicant requests less than the maximum budgeted category two support available for a school or library, the applicant may request the remaining balance in a school's or library's category two budget in subsequent funding years of the five-year funding cycle. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library building, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500.

* * * * *

[FR Doc. 2019–15164 Filed 7–16–19; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 84, No. 137

Wednesday, July 17, 2019

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–2018–0074]**

### Recognition of Freedom From Citrus Longhorned Beetle and Asian Longhorned Beetle in Certain European Union Countries

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are notifying the public that we propose to update the U.S. Department of Agriculture Plants for Planting Manual by recognizing 22 European Union Member States as being free from citrus longhorned beetle (CLB) and Asian longhorned beetle (ALB) and removing them from the list of countries where CLB and ALB are present. We would also change the entry conditions in the manual for imports of certain host plant taxa of CLB and ALB from four of these countries (Belgium, Denmark, the Netherlands, and the United Kingdom) because they have previously approved genera exempted from the category of plants Not Authorized Pending Pest Risk Analysis. These changes would relieve certain restrictions on host plants of CLB and ALB from Belgium, Denmark, the Netherlands, and the United Kingdom while continuing to mitigate the risk of introducing quarantine pests into the United States.

**DATES:** We will consider all comments that we receive on or before September 16, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2018-0074.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0074* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemarie Rodriguez-Yanes, Regulatory Policy Specialist, PHP, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737; (301) 851–2313; *Rosemarie.Rodriguez-Yanes@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Under the regulations in ''Subpart H—Plants for Planting'' (7 CFR 319.37–1 through 319.37–23, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of plants for planting (including living plants, plant parts, seeds, and plant cuttings) to prevent the introduction of quarantine pests into the United States. *Quarantine pest* is defined in § 319.37–2 as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled. In accordance with § 319.37–20, APHIS may impose quarantines and other restrictions on the importation of specific types of plants for planting. These restrictions are listed in the USDA Plants for Planting Manual.[1] Under § 319.37–20, if APHIS determines it is necessary to add, change, or remove restrictions on the importation of a specific type of plant for planting, we will publish in the **Federal Register** a notice that announces the proposed change to the manual and invites public comment.

The citrus longhorned beetle (CLB), *Anoplophora chinensis* (Forster), and the Asian longhorned beetle (ALB), *Anoplophora glabripennis* (Motschulsky), are destructive polyphagous wood boring pests and are quarantine pests for the United States.

In 2012, the European Commission (EC) asked APHIS to recognize pest freedom from CLB and ALB in European Union (EU) Member States based on equivalence and provided APHIS with supporting information that included new regulatory requirements, emergency control measures, and movement control for both species.[2] In 2015, the EC revised their regulated CLB and ALB host list to include all the host genera of concern to APHIS.

Based on information provided by the EC, we prepared a commodity import evaluation document (CIED). In the CIED, we concluded that in accordance with international provisions [3] for recognition of pest free areas and areas of low prevalence, we would recognize specific EU Member States that are either free from both CLB and ALB or as having eradicated an infestation of these pests at least 3 years ago.

Accordingly, we propose to update the USDA Plants for Planting Manual by removing 22 EU Member States from the list of countries where CLB and ALB are present. However, although these countries are free of CLB and ALB, we note that this action changes the import requirements for host plants for these pests for only four of these countries: Belgium, Denmark, the Netherlands, and the United Kingdom.[4] These are the only EU countries that have previously approved CLB and ALB host genera that are currently exempt from the category of plants Not Authorized Pending Pest Risk Analysis, or NAPPRA.[5]

[1] *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf.*

[2] See ''Commission Implementing Decision 2015/893 for A. glabripennis (*http://eur-lex.europa.eu/legal-content/EN/TXT/uri=CELEX:32015D0893*), and Commission Implementing Decision 2012/138 for A. chinensis'' *http://eur-lex.europa.eu/legal-content/EN/TXT/qid=1524250924966&uri=CELEX:32012D0138.*

[3] ISPM 29: Recognition of pest free areas and areas of low pest prevalence. International Plant Protection Convention, 2017: *https://www.ippc.int/static/media/files/publication/en/2017/05/ISPM_29_2007_En_2017-05-25_PostCPM12_InkAm.pdf.*

[4] Country and individual host taxa are listed in Table 3–3 of the USDA Plants for Planting Manual. Import requirements for countries referenced in Table 3–3 and that are free of both CLB and ALB are located in Table 3–8.

[5] When a plant is NAPPRA it means that the plant cannot be imported until a pest risk analysis is requested and completed for that plant. APHIS exempts imports of plants that are hosts of quarantine pests from the NAPPRA requirements

NAPPRA-exempt host taxa of CLB and ALB from Belgium, Denmark, the Netherlands, and the United Kingdom would be admissible with the current import permit requirements with a stem or root collar diameter greater than 10 mm (0.4 inches). The NAPPRA-exempt taxa from these four EU countries affected by the proposed changes are:

- *Malus* spp. from Belgium;
- *Hibiscus* spp. and *Rosa* spp. from Denmark;
- Non-variegated *Acer japonicum,* Non Variegated *Acer palmatum, Aralia* spp., *Carpinus* spp., *Cercidiphyllum* spp., *Cercis* spp., *Cornus* spp., *Corylus* spp., *Cotoneaster* spp., *Fagus* spp., *Ficus* spp., *Hedera* spp., *Ilex* spp., *Malus* spp., *Prunus* spp., *Robinia* spp., *Rosa* spp., and *Styrax* spp. from the Netherlands; and
- *Rosa* spp. and *Rubus* spp. from the United Kingdom.

Furthermore, these host taxa must also meet the following criteria for entry into the United States:

- The host plants were grown solely on mother stock from Belgium, Denmark, the Netherlands, and the United Kingdom; and
- The host plants have never been grown in a country from which their importation would be prohibited NAPPRA as listed in the USDA Plants for Planting Manual.

We are only recognizing EU Member States that are free from both pests, or that eradicated an infestation at least 3 years ago. In our updated list, the EU Member States that would continue to be listed as countries where ALB and/or CLB are present are: Austria, Croatia, Finland, France, Germany, and Italy.

After we review public comments on our proposed changes to the USDA Plants for Planting Manual, we will publish a second notice to affirm our proposed changes or to inform persons of any additional changes with respect to the importation of host plants of CLB and ALB from Belgium, Denmark, the Netherlands, and the United Kingdom.

**Authority:** 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of July 2019.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2019–15185 Filed 7–16–19; 8:45 am]

BILLING CODE 3410–34–P

when there is significant trade of that plant between the exporting country and the United States. We continue to allow such importation based on our experience with importing these plants for planting and our findings, through inspection, that they are generally pest free.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2019–0033]**

### Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Revision to and extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with regulations for the importation of live poultry, poultry meat, and other poultry products from specified regions.

**DATES:** We will consider all comments that we receive on or before September 16, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2019*-0033.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0033, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0033* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information about the importation of live poultry, poultry meat, and other poultry products from specified regions, contact Dr. Magde Elshafie, Senior Staff Veterinarian, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 851–3300. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions.

*OMB Control Number:* 0579–0228.

*Type of Request:* Revision to and extension of approval of an information collection.

*Abstract:* Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out the mission, APHIS regulates the importation of animals and animal products into the United States based on regulations contained in 9 CFR parts 92 through 98.

Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the United States' ability to compete in the world market of animal and animal product trade. APHIS' Veterinary Services administers regulations intended to prevent the introduction of animal diseases into the United States. The regulations in parts 93 and 94 place certain restrictions on the importation of live poultry, poultry meat, and other poultry products to prevent the introduction of highly pathogenic avian influenza (HPAI), Newcastle disease, and other exotic poultry diseases into the United States.

To ensure live poultry, poultry meat, and other poultry products do not pose a risk of introducing HPAI, Newcastle disease, or other exotic poultry diseases into the United States, APHIS requires the following information collection activities: Applications for import or in-transit permits; import or in-transit permit customs declarations; reports of animals, poultry, or hatching eggs offered for importation; health certificates; certificates of origin; maintenance of records; cooperative service agreements; and certificates for shipment back to the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper

performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Federal animal health authorities of certain regions that export live poultry, poultry meat, and other poultry products; importers; pet bird owners; and zoological facilities.

*Estimated annual number of respondents:* 24.

*Estimated annual number of responses per respondent:* 2.

*Estimated annual number of responses:* 56.

*Estimated total annual burden on respondents:* 57 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of July 2019.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2019–15186 Filed 7–16–19; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

**[Docket No. NRCS–2019–0010]**

### Adoption of Another Agency's Final Environmental Impact Statement To Implement the Feral Swine Eradication and Control Pilot Program

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

**ACTION:** Notice of intent (NOI) to adopt a Final Environmental Impact Statement (FEIS).

**SUMMARY:** NRCS announces its intent to adopt the FEIS, titled ''Feral Swine Damage Management: A National Approach EIS'', prepared by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), under the Environmental Impact Statement (EIS) adoption provisions of the Council on Environmental Quality (CEQ).

**DATES:** *Comment date:* NRCS will accept comments that are received or postmarked by August 16, 2019.

**ADDRESSES:** You may submit comments concerning the adoption of the FEIS titled, ''Feral Swine Damage Management: A National Approach EIS,'' or submit comments on actions being proposed by NRCS regarding this matter to the Federal eRulemaking Portal at *www.regulations.gov.* Follow the online instructions for submitting comments.

The FEIS can be accessed here: *https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/programs/nepa/sa_environmental_assessments+%28ea%29/sa_ws_environmental_assessments_state/ct_united_states.*

The associated NRCS Announcement of Program Funding can be accessed on *grants.gov.*

**FOR FURTHER INFORMATION CONTACT:** Martin Lowenfish, Branch Chief for Areawide Planning, Natural Resources Conservation Service, at *Martin.Lowenfish@usda.gov* or (202) 690–4979.

**SUPPLEMENTARY INFORMATION:** NRCS announces its intent to adopt the FEIS titled, ''Feral Swine Damage Management: A National Approach EIS'', prepared by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the EIS adoption provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.3). NRCS is proposing this action to address the mandates in section 2408 of the Agriculture Improvement Act of 2018 (2018 Farm Bill, Pub. L. 115–334) to provide financial assistance for a Feral Swine Eradication and Control Pilot Program in collaboration with APHIS.

Prior to proposing adoption, NRCS reviewed the FEIS and determined that it adequately addresses the alternatives and environmental impacts related to reducing feral swine damage to agriculture, natural resources, property, animal health, and human health and safety on private lands per NRCS's Title 190—National Environmental Compliance Handbook, part 610, subpart F, section 610.83(D), and subpart H, section 610.134. As described in the FEIS, the APHIS project area includes all the United States and its Territories where feral swine exist or may occur. The APHIS Wildlife Services (APHIS–WS) program currently works with federal, state, territorial, and local agencies; tribes; organizations; and private individuals to address specific localized feral swine damage problems. As NRCS collaborates with farmers, ranchers, and non-industrial private forest landowners to address natural resource management objectives on private land throughout the United States and its Territories, NRCS is able to implement actions that complement those of APHIS with NRCS' constituency. Feral swine are a threat nationwide; private lands currently or will soon face growing threats from feral swine. Therefore, section 2408 of the 2018 Farm Bill requires that APHIS and NRCS cooperate in this effort.

The FEIS states that APHIS would serve as the lead agency in a nationally coordinated cooperative effort with other agency partners, tribes, organizations, and local entities. NRCS was a participating agency, but not a cooperating agency, in the preparation of the Feral Swine Damage Management: A National Approach—Final Environmental Impact Statement when it was finalized in 2015. As required in the 2018 Farm Bill, NRCS, through this pilot program, will cooperate with APHIS nationally and will serve as the lead agency for implementing the complementary NRCS action.

The FEIS states that the proposed action is needed to:

1. Expand feral swine management programs nationwide to stabilize and eventually reduce the national feral swine population and associated threats to agriculture, natural resources, property, animal health, and human health;

2. Further develop cooperative partnerships with other pertinent federal, state, territorial, tribal, and local agencies, and private organizations working to reduce impacts of feral swine;

3. Expand feral swine disease monitoring to protect agriculture and human health;

4. Develop and improve tools and methods to manage feral swine populations, predictive models to assess feral swine population expansion and economic impacts, and risk analyses for feral swine impacts to agriculture, animal health, and human health;

5. Develop outreach materials and activities to educate the public about feral swine damage and related

activities to prevent or reduce damage; and

6. Coordinate with Canada and Mexico to establish a collaborative plan to address the feral swine threat along the common borders.

The NRCS actions under section 2408 of the 2018 Farm Bill are narrower than the scope of the larger APHIS effort defined in the FEIS and are limited to providing financial assistance specifically for outreach, training, equipment, and operations for feral swine trapping, consistent with APHIS technical standards. Subsequent actions, including disposal, are the responsibility of those carrying out the trapping activities, and must occur consistent with all associated federal, state, and local laws. These actions are fully covered by the FEIS Alternative 2, which was considered by APHIS to be the environmentally preferable and preferred alternative. NRCS has determined that these actions are substantially the same those analyzed in the 2015 Feral Swine Damage Management: A National Approach—Final Environmental Impact Statement, and is circulating the statement in Final form. For its proposed action, NRCS also has determined that Alternative 2 would be environmentally preferable and preferred.

Section 2408 of the 2018 Farm Bill requires that NRCS establish this effort as a pilot program. The specific locations chosen by NRCS for this pilot are based on the severity of damage. NRCS has determined that 11 states, where APHIS has determined feral swine population densities and corresponding associated damages are highest, will be the target of the initial NRCS pilot effort. These 11 states are: Alabama, Arkansas, California,[1] Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas. NRCS may consider expanding beyond these 11 pilot states, consistent with the nationwide scope of the FEIS. NRCS and APHIS will collaborate through State technical committees to identify projects under the pilot program and will do so in a way that places a priority where feral swine are a significant threat to agriculture, native ecosystems, or human or animal health.

Prior to recommending adoption, NRCS completed an internal checklist, titled ''NEPA Supplementation Review and Documentation Checklist,'' as required by its National Environmental Compliance Handbook. It was determined that the FEIS does not need to be supplemented prior to adoption. Further, the FEIS evaluated five alternatives, incorporated mitigation into those alternatives, and included a comprehensive evaluation of environmental impacts. Given this, NRCS has determined the FEIS adequately covers NRCS' proposed action, as encompassed by section 2408 of the 2018 Farm Bill, and has, therefore, proposed its adoption. An associated decision will not be made earlier than 30 days following the publication of this notice in the **Federal Register**.

NRCS requests feedback from the public, other agencies, tribes, and other interested parties on the proposal to adopt the APHIS FEIS, the FEIS itself, and any associated issues and concerns.

**Kevin Norton,**

*Acting Associate Chief, Natural Resources Conservation Service.*

[FR Doc. 2019–15211 Filed 7–16–19; 8:45 am]

BILLING CODE 3410–16–P

[1] California chose not to participate at this time.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–887]**

### Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2018

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the POSCO single entity and eleven non-examined companies made sales of subject merchandise at less than normal value (NV) during the period of review (POR) November 14, 2016 through April 30, 2018. Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Michael Bowen or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0768 or (202) 482–4868, respectively.

### Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from the Republic of Korea. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

### Background

On July 12, 2018, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from the Republic of Korea for fourteen companies.[2] We selected POSCO/POSCO Daewoo Corporation as the mandatory respondent because it was the only company under review that had entries of subject merchandise during the POR.[3] In December 2018, we extended the preliminary results of this review to no later than May 1, 2019.[4] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[5] In June 2019, we extended the preliminary results of this review to no later than July 10, 2019.[6] For a complete

[1] For a full description of the scope of the order *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2018 Administrative Review: Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32273 (July 12, 2018).

[3] *See* Memorandum, ''Administrative Review of Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Respondent Selection'' dated October 4, 2018.

[4] *See* Memorandum, ''Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Extension of the Deadline for Preliminary Results of the Antidumping Duty Administrative Review; 2016–2018,'' dated December 17, 2018.

[5] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[6] *See* Memorandum, ''Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea:

Continued

description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

**Preliminary Results of the Review**

As a result of this review, Commerce preliminarily determines that the following weighted-average dumping margin exists for the period November 14, 2016 through April 30, 2018: [7]

| Exporter or producer | Weighted-average dumping margin (percent) |
|---|---|
| POSCO single entity [8] | 20.09 |

Review-Specific Average Rate Applicable to the Following Companies: [9]

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Buma Ce Co., Ltd. | 20.09 |
| Dong Yang Steel Pipe Co., Ltd. | 20.09 |
| Dongkuk Steel Mill Co., Ltd. | 20.09 |
| Expeditors Korea Ltd. | 20.09 |
| Haem Co., Ltd. | 20.09 |
| Hyundai Glovis Co., Ltd. | 20.09 |
| Hyundai Steel Company | 20.09 |
| J.I. Sea & Air Express Co., Ltd. | 20.09 |
| Maxpeed Co., Ltd. | 20.09 |
| Rames Logistics Co., Ltd. | 20.09 |
| Sumitomo Corp. Korea Ltd. | 20.09 |

**Disclosure and Public Comment**

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice.[10] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[12] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[15] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[16]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[17]

**Assessment Rates**

Upon publication of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[18]

Pursuant to 19 CFR 351.212(b)(1), where the respondents reported the entered value of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of such sales. Where the respondent did not report entered value, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[19] We will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[20] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the weighted-average dumping margin calculated for the POSCO single entity.

Extension of the Deadline for Preliminary Results of the Antidumping Duty Administrative Review; 2016–2018,'' dated June 3, 2019.

[7] *See* Preliminary Decision Memorandum

[8] Commerce is preliminarily determining that POSCO, POSCO Daewoo Corporation, POSCO Processing and Service Co., Ltd. and certain distributors and service centers are affiliated pursuant to section 771(33)(E) of the Act, and further that these companies should be treated as a single entity (collectively, the POSCO single entity) pursuant to 19 CFR 351.401(f). *See* Preliminary Decision Memorandum.

[9] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See* 19 CFR 351.303.

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310(d).

[17] *See* section 751(a)(3)(A) of the Act.

[18] *See* 19 CFR 351.212(b)(1).

[19] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[20] *See* 19 CFR 351.106(c)(2).

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by the POSCO single entity for which the POSCO single entity did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[21]

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

**Cash Deposit Requirements**

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the POSCO single entity and all other companies subject to this review will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 7.39 percent, the all-others rate established in the LTFV investigation.[22] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary 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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Affiliation and Collapsing
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2019–15196 Filed 7–16–19; 8:45 a.m.]

BILLING CODE 3510–DS–P

[21] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[22] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–834]**

### Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2016–2018

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Alice Maldonado or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–3693, respectively.

**Scope of the Order**

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Italy. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 12, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from Italy.[2] This review covers 10 producers and exporters of the subject merchandise. Commerce selected two companies, NLMK Verona SpA (NVR) and Officine Tecnosider s.r.l. (OTS), for individual examination. The producers and or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the

[1] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018).

resumption of operations on January 28, 2019.[3] On February 28, 2019, Commerce extended the preliminary results of this review by 120 days, until July 10, 2019.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary/italy/italy-fr.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period November 14, 2016 through April 30, 2018:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| NLMK Verona SpA | 1.26 |
| Officine Tecnosider s.r.l | 1.63 |

Review-Specific Average Rate Applicable to the Following Companies: [5]

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Euroflex SpA | 1.52 |
| Evraz Palini e Bertoli SpA | 1.52 |
| Ilva SpA | 1.52 |
| Metalcam SpA | 1.52 |
| Modelleria di Modini Renato | 1.52 |
| Ondulit Italiana SpA | 1.52 |
| Padana Tubi e Profilati Acciaio SpA | 1.52 |
| Riva Fire SpA | 1.52 |

**Disclosure and Public Comment**

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice or seven days after the date on which the final verification report is issued in this proceeding.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

**Assessment Rates**

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[14]

Where the respondent did not report entered value or reported amounts based on average data, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [15] of the cash deposit rates calculated for NVR and OTS, excluding any which are zero or *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review

[3] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Carbon and Alloy Steel Cut-to-Length Plate from Italy: Extension of Deadline for Preliminary Results of 2016 -2018 Antidumping Duty Administrative Review,'' dated February 28, 2019.

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* Section 751(a)(3)(A) of the Act.

[14] *See* 19 CFR 351.212(b).

[15] This rate was calculated as discussed in footnote 5, above.

for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[16]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

## Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.08 percent, the all-others rate established in the LTFV investigation.[17] These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice serves as a preliminary 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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

## Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2019–15203 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–DS–P

[16] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

---

# DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–580–888]**

## Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; 2017

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that POSCO, a producer/exporter of certain carbon and alloy steel cut-to-length plate from the Republic of Korea (Korea), received countervailable subsidies during the period of review (POR), April 4, 2017 through December 31, 2017. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Bob Palmer or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068 and (202) 482–0339, respectively.

## Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from the Republic of Korea. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

## Background

On July 12, 2018, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on certain carbon and alloy steel cut-to-length plate from Korea.[2] On December 17, 2018, Commerce extended the deadline for the preliminary results of this review to no later than May 31, 2019.[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[4] Accordingly, the revised deadline for the preliminary results of this review is now July 10, 2019. For a complete description of the events that

[1] For a full description of the scope of the order *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2017: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32278 (July 12, 2018); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 39688, 39690 n.10 (Correcting the POR for this review.).

[3] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated December 17, 2018.

[4] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

## Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the accompanying Preliminary Decision Memorandum.

## Intent To Rescind Administrative Review, in Part

On August 7, 2018, we received a timely filed a no-shipments certification from Hyundai Steel Company (Hyundai).[7] U.S. Customs and Border Protection (CBP) did not provide Commerce with any contradictory information.[8] Because there is no evidence on the record to indicate that Hyundai had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the review with respect to Hyundai.

[5] *See* Preliminary Decision Memorandum.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Hyundai's Letter, ''Carbon and Alloy Steel Cut-To-Length Plate from Korea: Notice of No Sales,'' dated August 7, 2018.

[8] *See* Memorandum,''Certain carbon and alloy steel cut-to-length plate from the Republic of Korea (C–580–888),'' dated August 16, 2018.

## Companies Not Selected for Individual Review

Commerce calculated an individual estimated net countervailable subsidy rate for POSCO, the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely under section 776 of the Act, the estimated net countervailiable subsidy rate calculated for POSCO is the rate assigned to all-other producers and exporters not selected for individual review. This is consistent with the methodology that we would use in an investigation to establish the all-others rate.[9]

## Preliminary Results of Review

In accordance with 19 CFR 351.224(b)(4)(i), we calculated an individual net countervailable subsidy rate for POSCO. For the POR, we preliminarily determine that the net countervailable subsidy rates for the producers/exporters under review to be as follows:

| Company | Net countervailable subsidy rate (percent *ad valorem*) |
|---|---|
| POSCO [10] | 0.56 |
| BDP International | 0.56 |
| Blue Track Equipment | 0.56 |
| Boxco | 0.56 |
| Bukook Steel Co., Ltd | 0.56 |
| Buma CE Co., Ltd | 0.56 |
| Daelim Industrial Co., Ltd | 0.56 |
| Daesam Industrial Co., Ltd | 0.56 |
| Daesin Lighting Co., Ltd | 0.56 |
| Daewoo International Corp | 0.56 |
| Dong Yang Steel Pipe | 0.56 |
| Dongkuk Industries Co., Ltd | 0.56 |
| Dongkuk Steel Mill Co., Ltd | 0.56 |
| Dongbu Steel Co., Ltd | 0.56 |
| EAE Automotive Equipment | 0.56 |
| EEW KHPC Co., Ltd | 0.56 |
| Eplus Expo Inc | 0.56 |
| GS Global Corp | 0.56 |
| Haem Co., Ltd | 0.56 |
| Han Young Industries | 0.56 |
| Hyosung Corp | 0.56 |
| Hyundai Steel Co | 0.56 |
| Jinmyung Frictech Co., Ltd | 0.56 |
| Korean Iron and Steel Co., Ltd | 0.56 |
| Kyoungil Precision Co., Ltd | 0.56 |
| Samsun C&T Corp | 0.56 |
| SK Netwoks Co., Ltd | 0.56 |
| Steel N People Ltd | 0.56 |
| Summit Industry | 0.56 |
| Sungjin Co., Ltd | 0.56 |
| Young Sun Steel | 0.56 |

[9] *See* section 705(c)(5)(A).

## Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[11]

Commerce will establish a deadline for interested parties to submit written comments (case briefs) and rebuttal comments (rebuttal briefs) at a later date.[12] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[14] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the scheduled date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[15] Issues addressed during the hearing will be limited to those raised in the briefs.[16] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: POSCO Chemtech, POSCO Nippon RHF Joint Venture Co., Ltd., POSCO Processing & Service, Pohang Scrap Recycling Distribution Center, and POSCO M-Tech.

[11] *See* 19 CFR 224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310.

[16] *See* 19 CFR 351.310(c).

### Assessment Rate

Consistent with section 751(a)(1) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

### Cash Deposit Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit instructions, when imposed, shall remain in effect until further notice.

### Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Intent to Rescind, In Part, the Administrative Review
V. Scope of the Order
VI. Rate for Non-Examined Companies
VII. Subsidies Valuation Information
VIII. Use of Facts Otherwise Available
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2019–15190 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–828]**

## Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Preliminary Results of the Antidumping Duty Administrative Review; 2016–2018

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the producer/exporter subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Janz or Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2972 or (202) 482–1280, respectively.

### Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from France. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

### Background

On July 12, 2018, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from France for one company, Industeel France S.A.S (Industeel).[2] In November 2018, we extended the preliminary results of this review to no later than May 31, 2019.[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[4] Accordingly, the revised deadline for the preliminary results of this review is now July 10, 2019. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

### Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

[1] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from France,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018).

[3] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-To-Length Plate from France: Extension of the Deadline for Preliminary Results of the 2016–2018 Antidumping Duty Administrative Review,'' dated November 30, 2018.

[4] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary/france/france-fr.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 5.29 percent exists for Industeel for the period November 14, 2016 through April 30, 2018.

**Disclosure and Public Comment**

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[5] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[10] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[11]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[12]

**Assessment Rates**

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[13]

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the period of review produced by Industeel for which Industeel did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Industeel will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.15 percent, the all-others rate established in the LTFV investigation.[15] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 Commerce's presumption that reimbursement of antidumping duties occurred and the

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310(d).

[12] *See* section 751(a)(3)(A) of the Act.

[13] *See* 19 CFR 351.212(b).

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

subsequent assessment of double antidumping duties.

## Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2019–15197 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–858]**

### Certain Carbon and Alloy Steel Cut-to-Length Plate From Taiwan: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2018

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joshua Tucker or Ajay Menon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2044 or (202) 482–1993, respectively.

## Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Taiwan. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

## Background

On July 12, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from Taiwan.[2] This review covers 19 producers and/or exporters of subject merchandise. In November 2018, we extended the preliminary results of this review to no later than May 31, 2019.[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[4] Accordingly, the revised deadline for the preliminary results of this review is now July 10, 2019. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

## Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary/taiwan/taiwan-fr.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

## Preliminary Determination of No Shipments

Among the companies under review,[5] China Steel Corporation (CSC), Chun Chi Grating Co., Ltd. (Chun Chi), and Product Depot International Corp. (Product Depot) properly filed statements that they had no shipments of subject merchandise to the United States during the POR.[6] Based on their certifications and our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that CSC, Chun Chi, and Product Depot had no reviewable transactions during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to CSC, Chun Chi, or Product Depot, but, rather, we will complete the review for these companies and issue appropriate instructions to CBP based on the final results of this review.[7]

---

[1] For a full description of the scope of the order *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018).

[3] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Extension of the Deadline for Preliminary Results of the 2016–2018 Antidumping Duty Administrative Review,'' dated November 30, 2018.

[4] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[5] Commerce also received a properly-filed no shipments statement from an additional company, Pat & Jeff Enterprise Co., Ltd. However, because we received no request for an administrative review for this company, we have not considered this no shipments statement in this segment of the proceeding.

[6] *See* CSC's Letter, ''Administrative Review of the Antidumping Order on Carbon and Alloy Steel Cut-to-Length Plate from Taiwan for the 2016–18 Review Period—No Shipments Letter'' dated July 25, 2018; Product Depot's Letter, ''Carbon and Alloy Steel Cut-to-Length Plate from Taiwan—No Sales Letter,'' dated July 24, 2018; and Chun Chi's Letter, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan Request to Amend Administrative Protective Order—Request to Remove,'' dated June 28, 2019.

[7] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping*

Continued

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine the following weighted-average dumping margin exists for the period November 14, 2016 through April 30, 2018:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Shang Chen Steel Co., Ltd | 2.59 |

Review-Specific Rate Applicable to the Following Companies: [8]

| Exporter/producer | Dumping margin (percent) |
|---|---|
| Broad Hand Enterprise Co., Ltd | 2.59 |
| C.H. Robinson Freight Services | 2.59 |
| Eci Taiwan Co., Ltd | 2.59 |
| Locksure Inc | 2.59 |
| Nan Hoang Traffic Instrument Co | 2.59 |
| New Marine Consolidator Co., Ltd | 2.59 |
| North America Mining Group Co., Ltd | 2.59 |
| Oriental Power Logistics Co., Ltd | 2.59 |
| Scanwell Logistics (Taiwan) | 2.59 |
| Shin Yang Steel Co., Ltd | 2.59 |
| Shye Yao Steel Co., Ltd | 2.59 |
| Speedmark Consolidation | 2.59 |
| Sumeeko Industries Co., Ltd | 2.59 |
| Triple Merits Ltd | 2.59 |
| UKI Enterprise Co., Ltd | 2.59 |

**Disclosure and Public Comment**

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice.[9] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[14] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[15]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[16]

**Assessment Rates**

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d). For the companies which were not selected for individual review, we will assign an assessment rate based on the cash deposit rate calculated for SCS.[17] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by SCS for which SCS did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[18]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 39.52 percent, the all-others rate established in the LTFV investigation.[19] These deposit requirements, when

*Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[8] This rate is the rate calculated for SCS. *See* section 735(c)(5)(A) of the Act.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* section 751(a)(3)(A) of the Act.

[17] This rate was calculated as discussed in footnote 8, above.

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017).

imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary 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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Companies Not Selected for Individual Examination
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2019–15195 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–423–812]**

### Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2016–2018

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Alex Wood or Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–3860, respectively.

**Scope of the Order**

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Belgium. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 12, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from Belgium.[2] This review covers eight producers and exporters of the subject merchandise. Commerce selected two companies, Industeel Belgium S.A. (Industeel) and NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A. (NLMK Belgium), for individual examination. The producers and or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[3] On February 28, 2019, Commerce extended the preliminary results of this review by 120 days, until July 10, 2019.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary/belgium/belgium-fr.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period November 14, 2016 through April 30, 2018, as follows:

---

[1] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018).

[3] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Extension of Deadline for Preliminary Results of 2016 -2018 Antidumping Duty Administrative Review,'' dated February 28, 2019.

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Industeel Belgium S.A | 4.91 |
| NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louvire S.A | 13.27 |

Review-Specific Average Rate Applicable to the Following Companies: [5]

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Hengelhoef Concrete Joints NV | 11.36 |
| Sarens NV | 11.36 |
| Thyssenkrupp Materials Belgium N.V | 11.36 |
| Universal Eisen und Stahl GmbH | 11.36 |
| Valvan Baling Systems | 11.36 |
| Voestalpine Belgium NV | 11.36 |

## Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice or seven days after the date on which the final verification report is issued in this proceeding.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

## Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), where the respondents reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondents did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [14] of the cash deposit rates calculated for Industeel and NLMK Belgium, excluding any which are zero, *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

## Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation.[16] These deposit requirements, when

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* Section 751(a)(3)(A) of the Act.

[14] This rate was calculated as discussed in footnote 5, above.

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary 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 Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2019–15198 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–869]**

### Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that one of the producers/exporters subject to this administrative review did not make sales of subject merchandise at less than normal value (NV) and the other made no sales of subject merchandise during the period of review (POR) May 1, 2017 through April 30, 2018. Interested parties are invited to comment on these preliminary results of review.

**DATES:** Applicable July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

**Scope of the Order**

The products covered by the order are flat-rolled, cold-reduced steel products, regardless of chemistry, whether or not in coils, either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.,* ''diffusion annealed''), whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances from Japan. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 12, 2018, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on diffusion-annealed, nickel-plated, flat-rolled steel products from Japan.[2] This review covers two producers and exporters of the subject merchandise. In November 2018, we extended the preliminary results of this review to no later than May 31, 2019.[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 28, 2019.[4] Accordingly, the revised deadline for the preliminary results of this review is now July 10, 2019. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary/japan/japan-fr.htm.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

**Preliminary Determination of No Shipments**

Nippon Steel & Sumitomo Metal Corporation (Nippon Steel) properly filed its certification that it had no shipments of subject merchandise to the United States during the POR.[5] There is no information on the record which contradicts Nippon Steel's no shipment certification. Therefore, based on the evidence on the record, we preliminarily determine that Nippon Steel had no shipments of subject merchandise to the United States during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to Nippon Steel, but, rather, we will complete the review for this company and issue appropriate instructions to U.S. Customs and Border

---

[1] For a full description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018).

[3] *See* Memorandum, ''Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Extension of the Deadline for Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review,'' dated November 30, 2018.

[4] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[5] *See* Nippon Steel's Letter, ''Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: Certification of No U.S. Sales During Administrative Review Period,'' dated August 20, 2018.

Protection (CBP) based on the final results of this review.[6]

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for Toyo Kohan Co., Ltd. (Toyo Kohan) for the period May 1, 2017 through April 30, 2018.

**Disclosure and Public Comment**

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[7] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Case and rebuttal briefs should be filed using ACCESS.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[12] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[13]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[14]

**Assessment Rates**

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by Toyo Kohan for which Toyo Kohan did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Toyo Kohan will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this or a previous administrative review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the cash deposit rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 45.42 percent, the all-others rate established in the LTFV investigation.[16] These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Preliminary Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2019–15192 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* section 751(a)(3)(A) of the Act.

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping Duty Order,* 79 FR 30816 (May 29, 2014).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; NOAA's Teacher at Sea Program

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 16, 2019.

**ADDRESSES:** Direct all written comments to Adrienne Thomas, Government Information Specialist, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Hammond, (301) 427–8039, or *jennifer.hammond@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This request is for extension of a current information collection.

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the NOAA Teacher at Sea Program. Through this program, educators spend up to 4 weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. The application solicits information from interested educators: Basic personal information, teaching experience, and ideas for applying program experience in their classrooms, plus two recommendations and a NOAA Health Services Questionnaire required of anyone selected to participate in the program. Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea themselves. NOAA does not collect information from this universe of respondents for any other purpose.

#### II. Method of Collection

Forms can be completed online and submitted electronically, and/or printed and mailed.

#### III. Data

*OMB Control Number:* 0648–0283.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 375.

*Estimated Time per Response:* 45 minutes to read and complete application, 15 minutes to complete a Health Services Questionnaire, 15 minutes to deliver and discuss recommendation forms to persons from whom recommendations are being requested, 15 minutes for those persons to complete a recommendation form, and 2 hours for a follow-up report.

*Estimated Total Annual Burden Hours:* 309.

*Estimated Total Annual Cost to Public:* $221.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–15181 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Survey To Develop Estimates of Marine-Related Economic Activity in the United States

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 16, 2019.

**ADDRESSES:** Direct all written comments to Adrienne Thomas, Government Information Specialist, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Kate Quigley, Office for Coastal Management, 2234 S Hobson Avenue, Charleston, SC 29405–2413; telephone: 843–740–1155; email: *kate.quigley@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This is a request for a new collection of information.

The objective of the survey is to collect information from manufacturers of technology used in marine related

businesses. This data collection is needed for use by the National Oceanic and Atmospheric Administration (NOAA) to describe the group of businesses that comprise the marine technology sector of the economy. NOAA describes the marine economy of the United States and this information is used by decision-makers to make policy decisions. NOAA's mission is to understand and predict changes in climate, weather, oceans, and coasts, to share that knowledge and information with others, and to conserve and manage coastal and marine ecosystems and resources. NOAA is authorized to engage in estimation of the ocean economy under the Coastal Zone Management Act, 16 U.S.C. 1456c. NOAA is responsible for measuring the size of the ocean economy, including developing metrics for the number of establishments, number of employees, wages, and GDP for six economic sectors within the ocean economy: Living Resources, Marine Construction, Marine Transportation, Offshore Mineral Resources, Ship and Boat Building, and Tourism and Recreation. NOAA publishes these metrics as part of the Economics: National Ocean Watch (ENOW) dataset on the Digital Coast website.

The information collected from manufacturers of technology used in marine related businesses will include (1) total revenue, (2) the proportion of revenue derived from marine related products and services and (3) information about sales going to consumers, businesses, and government. This information will be used to better understand marine related production of products and services by different manufacturers of technology used in marine related businesses. This information will be used to inform NOAA's understanding about this group of businesses that comprise the marine technology sector as part of NOAA's estimation of the ocean economy.

## II. Method of Collection

The primary data collection vehicle will be an internet-based, survey distributed to manufacturers of technology used in marine related businesses. Respondents will volunteer to participate in the survey and choose which questions to answer. Telephone and personal interview may be employed to supplement and verify survey responses. All responses will be kept confidential in accordance with government confidentiality procedures.

## III. Data

*OMB Control Number:* 0648–XXXX.
*Form Number(s):* None.
*Type of Review:* Regular submission (new information collection).
*Affected Public:* Business or other for-profit organizations.
*Estimated Number of Respondents:* 1,000.
*Estimated Time per Response:* 8 minutes.
*Estimated Total Annual Burden Hours:* 133 hours.
*Estimated Total Annual Cost to Public:* $0 in reporting/recordkeeping.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–15215 Filed 7–16–19; 8:45 am]

**BILLING CODE 3510–JE–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG907**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska

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

**ACTION:** Notice; two proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

**SUMMARY:** NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to two years of activity related to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. The marine construction associated with the proposed activities will occur during two distinct year-long phases, and incidental take associated with these phases would be authorized in separate, consecutive IHAs. NMFS is also requesting comments on a possible one-year renewal for each IHA that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than August 16, 2019.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

## National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

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 preliminarily determined that the issuance of the two proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

## Summary of Request

On September 11, 2018, NMFS received a request from ADOT&PF for two consecutive IHAs to take marine mammals incidental to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, Alaska. The application was deemed adequate and complete on March 20, 2019. ADOT&PF's request is for take of a small number of eight species of marine mammals, by Level B harassment. Of those eight species, three (harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*Phocoenoides dalli*) may also be taken by Level A harassment. Neither ADOT&PF nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate. The proposed IHAs would each cover one year of the two year project.

## Description of Proposed Activity

### *Overview*

The ADOT&PF plans to make improvements to existing ferry berths and construct new ferry berths on Gravina Island and Revilla Island in Tongass Narrows, near Ketchikan in southeast Alaska (Figure 1–1 of the application). These ferry facilities provide the only public access between the city of Ketchikan, AK on Revilla Island, and the Ketchikan International Airport on Gravina Island (see Figure 1–2 in application). The project's proposed activities that have the potential to take marine mammals, by Level A harassment and Level B harassment, include vibratory and impact pile driving, drilling operations for pile installation (rock socket and tension anchor drilling), and vibratory pile removal.

Improvement and construction of facilities is important to provide reliable access to the airport and facilitate growth and development in the region. Some of the existing ferry facilities are aging and periodically out-of-service for repairs or maintenance, and this project will provide redundant ferry berths to increase reliability. Ketchikan is Alaska's fifth largest city, with a population of approximately 8,125, and numerous marine facilities including fishing infrastructure, cruise and ferry terminals, and shipyards.

Planned construction includes the installation of new ferry facilities and the renovation of existing structures. The marine construction associated with the proposed activities will occur during two distinct year-long phases, and take associated with these phases would be authorized in separate, consecutive IHAs. Phase 1, which primarily includes both improvement of existing facilities and construction of new facilities on both islands, is planned to occur between March, 2020 to February, 2021, and Phase 2, which includes the improvement/refurbishing of existing facilities on both islands, is planned to occur from March, 2021, to February, 2022.

Section 101(a)(5)(D) specifies that ''the Secretary shall authorize [incidental take by harassment] for periods of not more than 1 year.'' In this case, the ADOT&PF knows at this time that it will take two years to complete the entire project, knows which activities would be conducted in each of the two years, and has submitted the entire two-year project to NMFS. NMFS has sufficient information to determine which species would be affected, the estimated amount and type of take that would result from the activities, and the estimated impacts to subsistence use from ADOT&PF's activities over each of the two years of the project. Thus NMFS is able to determine at this time whether the proposed activities meet all statutory requirements and can develop appropriate mitigation, monitoring, and reporting requirements for both years. It is therefore appropriate for NMFS to publish notice in the **Federal Register**, and seek public comment on, proposed IHAs for each of the two consecutive years of the project at this time.

### *Dates and Duration*

In-water construction of Phase 1 is scheduled to begin in March 2020 and continue through February 2021. In-water construction of Phase 2 is scheduled to begin in March 2021 and continue through February 2022. Construction activities such as out-of-water work or in-water work that will not result in take may occur at multiple sites simultaneously; however, in-water pile installation/removal (including drilling) will not occur simultaneously at one or more component sites. Pile installation will occur intermittently over the work period, for durations of

minutes to hours at a time depending on weather, construction and mechanical delays, marine mammal shutdowns, and other potential delays and logistical constraints. There are 144 days of in-water construction planned for Phase 1 and 27 days planned for Phase 2.

*Specific Geographic Region*

The proposed Tongass Narrows project is located within the City of Ketchikan, Alaska (see Figure 1 below). Improvements and new construction on Revilla Island will occur approximately 2.6 miles north of downtown Ketchikan. The new Revilla Island Airport Shuttle Ferry Berth will be constructed immediately adjacent to the existing Revilla Island Ferry Berth. Improvements and new construction on Gravina Island will all be adjacent to the Ketchikan International Airport, and the new Gravina Island Airport Shuttle Ferry Berth will be constructed immediately adjacent to the existing Gravina Island Ferry Berth. The new Gravina Island Heavy Freight Mooring Facility will be constructed in the same location as the existing barge offload facility.

Tongass Narrows is an approximately 13-mile-long, north-south-oriented marine channel situated between Revilla Island to the east and Gravina Island to the west. In the vicinity of the proposed project, Tongass Narrows is as little as 300 meters (984 feet) wide. Tongass Narrows is generally characterized by strong tidal currents and by steep bedrock or coarse gravel-cobble-boulder shoreline. Pile installation will occur in waters ranging in depth from less than 1 meter (3.3 feet) nearshore to approximately 20 meters (66 feet), depending on the structure and location.

BILLING CODE 4164–01–P

Figure 1: Map of Tongass Narrows proposed project area near Ketchikan, Alaska.

BILLING CODE 4164–01–C

Ongoing vessel activities throughout Tongass Narrows, land-based industrial and commercial activities, and regular aircraft operations result in elevated in-air and underwater sound conditions in the project area that increase with proximity to the proposed project component sites. Sound levels likely vary seasonally, with elevated levels during summer when the tourism and fishing industries are at their peaks.

*Detailed Description of Specific Activity*

As discussed earlier, this project is composed of two consecutive phases, with take of marine mammals from each phase proposed to be authorized through separate IHAs. When necessary, the description of activity is broken down by phase below, but information relevant to both phases is presented together. Proposed activities with potential to take marine mammals include the noise generated by drilling of rock sockets and tension anchors into bedrock for steel pipe piles, vibratory removal of steel pipe piles, vibratory installation of sheet piles, and vibratory and impact installation of steel pipe piles. Each phase of the project will include different activities that are described in detail in the following sections.

Above-water work will consist of the installation of concrete or steel platform decking panels, transfer bridges, dock-mounted fenders, pedestrian walkways, gangways, and utility lines. Upland construction activities will consist of new terminal facilities, staging areas,

parking lot expansions, new roadways, retaining walls, stairways, and pedestrian walkways. No in-water noise is anticipated in association with above-water and upland construction activities and no take is expected to occur from in-air noise due to the lack of nearby pinniped haul-outs and the smaller in-air isopleths compared to isopleths from in-water activities.

Description of In-Water Activities (General to Both Phases)

Four methods of pile installation are anticipated. These include vibratory and impact hammers, down-hole drilling of rock sockets, and installation of tension anchors at some locations. Most piles will be installed vertically (plumb), but some will be installed at an angle (battered). Tension anchors will be used to secure some piles to the bedrock to withstand uplift forces. Rock sockets will be drilled at other locations where overlying sediments are too shallow to adequately secure the bottom portion of the pile. Some piles will be seated in rock sockets as well as anchored with tension anchors. A vibratory hammer will be used to install 44 temporary template piles, no greater than 20 inches in diameter, to a depth of 25 feet or less. The total duration of vibratory installation and subsequent removal of temporary piles will be approximately 44 hours spread over multiple days as shown in Table 2, and will take place within the same days as permanent pile installation. Installation and removal of temporary piles is therefore not anticipated to add to the overall estimated 144 days of pile installation and removal for Phase 1 as shown in Table 1.

The steel sheet piles for the bulkheads are of a Z-shape. Each pile is approximately 28 to 30 inches wide, and they interlock together to form a continuous wall. These sheet piles will be installed into the existing ground at elevations varying from +8 inches to +26 inches mean lower low water. Most of this work is expected to be done at lower tides so that in-water pile driving work is minimized. However, some installation work below the tidal elevations (in water) can be expected. The ground where the sheet piles will be installed is comprised of existing rubble mound slopes. Some excavation work will be needed to temporarily remove the large rocks prior to driving the sheet piles.

*Vibratory and Impact Pile-Driving Methods*—Installation of steel piles through the sediment layer will be done using vibratory or impact methods. All piles will be advanced to refusal at bedrock. Where sediments are deep and rock socketing or anchoring is not required, the final approximately 10 feet of driving will be conducted using an impact hammer so that the structural capacity of the pile embedment can be verified. Where sediments are shallow, an impact hammer will be used to seat the piles into competent bedrock before rock drilling begins. The pile installation methods used will depend on sediment depth and conditions at each pile location. The sheet pile abutment bulkheads for the new Revilla and Gravina ferry berths will be installed using vibratory hammer methods. Vibratory and impact pile driving will occur during both Phase 1 and Phase 2 of the project (Table 1 and 3).

In Table 1, it is estimated that some piles will require 50 strikes from the impact hammer and others will require 200 strikes. In general, projects on Gravina Island will require approximately 50 strikes and projects on Revillia Island will require approximately 200 strikes. These differences are based on sediment characteristics, depth to bedrock, and the planned need for further drilling once at bedrock.

*Vibratory Pile Removal*—A total of 13 previously installed piles will be removed during Phase 2 of the project (Table 2), and no piles will be removed during Phase 1. When possible, existing piles will be extracted by directly lifting them with a crane. A vibratory hammer will be used if necessary to extract piles that cannot be directly lifted. Removal of each old pile is estimated to require no more than 15 minutes of vibratory hammer use for the majority of the piles, but the removal of one 24-inch diameter pile may take up to 30 minutes.

*Rock Socket Drilling*—Rock sockets are holes drilled into the bedrock to advance piles beyond the depth vibratory or impact driving methods are able to achieve in softer overlying sediments. The depth of the rock socket varies, but 10–15 feet is commonly required. Drilling of rock sockets through the bedrock may use both rotary and percussion drill mechanisms. Drilling breaks up the rock to allow removal of the fragments and insertion of the pile. Drill cuttings are expelled from the top of the pile using compressed air. The diameter of the drilled rock socket is slightly larger than the pile being driving, and the pile is therefore easily advanced in the rock as the hole is drilled. It is estimated that drilling rock sockets into the bedrock will take about 1–3 hours per pile. Rock sockets will be used in both Phase 1 and Phase 2 of the project (Table 1 and 3).

*Tension Anchors*—Tension anchors are installed within piles that are drilled into the bedrock below the elevation of the pile tip, after the pile has been driven through the sediment layer to refusal. A 6- or 8-inch diameter steel pipe casing is inserted inside the larger diameter production pile. A rock drill is inserted into the casing, and a 6- to 8-inch-diameter hole is drilled into bedrock with rotary and percussion drilling methods. The drilling work is contained within the smaller steel pile casing and the larger steel pipe pile. The typical depth of the drilled hole varies, but 20–30 feet is common. Rock fragments will be removed through the top of the casing with compressed air. A steel rod is then grouted into the drilled hole and affixed to the top of the pile. The purpose of a rock anchor is to secure the pile to the bedrock to withstand uplift forces. Tension anchors will be utilized during both Phase 1 and Phase 2 of the project, as shown in Table 1 and 3. Figure 1–3 in the IHA Application depicts a schematic of rock socket and tension anchor drilling techniques.

Underwater noise from tension anchor construction is typically low. The bedrock is overlain with sediments, and will attenuate noise production from drilling and reduce noise propagation into the water column. Additionally, the casing used during drilling is inside the larger diameter pile, further reducing noise levels. Therefore, the effects of tension anchor drilling on marine mammals are not expected to rise to the level of take. As stated, take is highly unlikely and is not proposed to be authorized for tension anchor drilling activities, so its impacts are discussed minimally in this document.

*Phase 1 Project Components*

Each of the four permanent project components in Phase 1 will include installation of steel pipe piles that are 18, 24, or 30 inches in diameter. Temporary piles installed and removed during Phase 1 to support templates for permanent piles will be a maximum of 20 inches in diameter. Two of the components (Revilla and Gravina New Ferry Berths) will require the installation of steel sheet piles that will comprise the bulkhead abutments and are 27.6 or 30.3 inches in width. These sheet piles will be installed using vibratory driving at elevations varying from +8 inches to +26 inches mean lower low-water. Most of this work is expected to be done at lower tides so that in-water pile driving work is minimized. However, some installation work below the tidal elevations (in

water) can be expected. The ground where the sheet piles will be installed is comprised of existing rubble mound slopes. Some excavation work will be needed to temporarily remove the large rocks prior to driving the sheet piles.

The estimated installation and removal rates for Phase 1 are 1.5 permanent pipe piles per day, 10 permanent sheet piles per day, and 4 to 6 temporary piles per day. Different types of piles may be installed or removed within a day.

Project components are briefly described below and Table 1 shows the number and size of piles broken down by the individual components of Phase 1. For additional information on how these piles will be configured, and what structures they will make up, please refer to the IHA Application.

*Revilla New Ferry Berth and Upland Improvements*—The new Revilla Island airport shuttle ferry berth will be constructed immediately adjacent to the existing Revilla Island Ferry Berth (Figure 1–2 in IHA Application). It is the only Phase 1 component that will occur on Revilla Island.

*New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements*—The new Gravina Island airport shuttle ferry berth will be constructed immediately adjacent to the existing Gravina Island Ferry Berth (Figure 1–2 in IHA Application).

*Gravina Airport Ferry Layup Facility*—Improvements to the Gravina Island Ferry layup dock facility will occur in the same location as the existing layup dock facility (Figure 1–2 in IHA Application). The current layup dock is in disrepair and needs to be replaced.

*Gravina Freight Facility*—The new Gravina Island heavy freight mooring facility will be constructed in the same location as the existing barge offload facility (Figure 1–2 in IHA Application). This facility will provide improved access to Gravina Island for highway loads that cannot be accommodated by the shuttle ferry. Five breasting dolphins and one mooring dolphin will be constructed to support barge docking and will include pedestrian walkways for access by personnel. In addition, two new pile-supported mooring line structures will be constructed above the high tide line.

TABLE 1—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION DURING PHASE 1

| Project component / Pile type | Number of piles | Number of rock sockets | Number of tension anchors | Average vibratory duration per pile (minutes) | Average drilling duration for rock sockets per pile (minutes) | Impact strikes per pile | Average duration (minutes) per pile for vibratory | Average piles per day (range) | Days of installation |
|---|---|---|---|---|---|---|---|---|---|
| Revilla New Ferry Berth and Upland Improvements: | | | | | | | | | |
| 24'' Pile Diameter | 65 | 0 | 35 | 30 | N/A | 200 | 30 | 1.5 (1–3) | 43 |
| 30'' Pile Diameter | 18 | 0 | 14 | 30 | N/A | 200 | 30 | 1.5 (1–3) | 12 |
| AZ 14–770 Sheet Pile | 55 | N/A | N/A | 15 | N/A | N/A | 15 | 6 (6–12) | 9 |
| New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements: | | | | | | | | | |
| 24'' Pile Diameter | 66 | 52 | 25 | 15 | 120 | 50 | 15 | 1.5 (1–3) | 44 |
| 30'' Pile Diameter | 8 | 4 | 4 | 15 | 180 | 50 | 15 | 1.5 (1–3) | 5 |
| AZ 19–700 Sheet Pile | 80 | N/A | N/A | 15 | N/A | N/A | 15 | 6 (6–12) | 12 |
| Gravina Airport Ferry Layup Facility: | | | | | | | | | |
| 18'' Pile Diameter | 3 | 0 | 0 | 15 | N/A | 50 | 15 | 1.5 (1–3) | 2 |
| 30'' Pile Diameter | 12 | 12 | 10 | 15 | 180 | 50 | 15 | 1.5 (1–3) | 8 |
| Gravina Freight Facility: | | | | | | | | | |
| 20'' Pile Diameter | 6 | 0 | 6 | 15 | N/A | 50 | 15 | 1.5 (1–3) | 4 |
| 24'' Pile Diameter | 3 | 3 | 3 | ..... | 120 | 50 | 15 | 1.5 (1–3) | 2 |
| 30'' Pile Diameter | 4 | 2 | 4 | 15 | 180 | 50 | 15 | 1.5 (1–3) | 3 |
| Phase 1 Total | 320 | 73 | 91 | ..... | ..... | ..... | ..... | ..... | 144 |

TABLE 2—NUMBERS OF TEMPORARY PILES TO BE INSTALLED AND REMOVED FOR EACH PROJECT DURING PHASE 1

| Project component | Number of temporary piles | Average vibratory duration per pile for installation (minutes) | Average vibratory duration per pile for removal (minutes) | Days of installation | Days of removal | Piles per day |
|---|---|---|---|---|---|---|
| Revilla New Ferry Berth and Upland Improvements. | 12 | 15 | 15 | 2 to 3 | 2 to 3 | 4 to 6. |
| New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements. | 12 | 15 | 15 | 2 to 3 | 2 to 3 | 4 to 6. |
| Gravina Airport Ferry Layup Facility. | 8 | 15 | 15 | 1 to 2 | 0.75 to 2 | 4 to 6. |
| Gravina Freight Facility. | 12 | 15 | 15 | 2 to 3 | 2 to 3 | 4 to 6. |
| Total | 44 | 660 (11 hours) | 660 (11 hours) | 7–11 | 7–11 | |

**Phase 2 Project Components**

The two project components in Phase 2 will include installation of steel pipe piles that are 16, 20, 24 and 30 inches in diameter as shown in Table 3. Methods for vibratory and impact installation of temporary and permanent piles, drilling of rock sockets, and installation of tension anchors will be consistent with those described above. The estimated installation and removal rate for Phase 2 is 1.5 pipe piles per day.

One 24-inch-diameter pile will be installed at the existing Revilla ferry berth. Fifteen 24-inch diameter piles and eight 30-inch-diameter piles will be installed at the existing Gravina ferry berth. A total of 10 piles will be removed to accommodate upgrades to the existing Revilla Island and Gravina Island ferry berths. One 24-inch pile will be removed from the floating fender dolphin at the existing Revilla ferry berth. The nine 16-inch-diameter piles that support the three existing dolphins at the Gravina ferry berth will also be removed. It is anticipated that, when possible, existing piles will be extracted by directly lifting them with a crane. A vibratory hammer will be used if necessary to extract piles that cannot be directly lifted. Installation of sheet piles and tension anchor drilling is not planned during Phase 2.

*Revilla Refurbish Existing Ferry Berth Facility*—Improvements to the existing Revilla Island Ferry Berth will include the following: (1) Replace the transfer bridge, (2) replace rubber fender elements and fender panels, (3) replace one 24-inch pile on the floating fender dolphin, and (4) replace the bridge float with a concrete or steel float of the same dimensions. Construction of the transfer bridge, bridge float, and fender elements will occur above water. The only in-water work will be pile installation and removal associated with construction of the dolphins. No temporary piles will be installed or removed during this component of the project.

*Gravina Refurbish Existing Ferry Berth Facility*—Improvements to the existing Gravina Island Ferry Berth will include the following: (1) Replace the transfer bridge, (2) remove the catwalk and dolphins, (3) replace the bridge float with a concrete or steel float of the same dimensions, (4) construct a floating fender dolphin, and (5) construct four new breasting dolphins. Construction of the transfer bridge, catwalk, and bridge float will occur above water. The only in-water work will be pile installation and removal associated with construction of the dolphins. A vibratory hammer will be used to install and remove 12 temporary template piles, no greater than 20 inches in diameter, to a depth of 25 feet or less (Table 4). The total duration of vibratory installation and subsequent removal of temporary piles will be approximately 6 hours spread over multiple days, and will take place within the same days as permanent pile installation. Installation and removal of temporary piles is therefore not anticipated to add to the overall estimated 27 days of pile installation and removal for Phase 2.

TABLE 3—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION AND REMOVAL DURING PHASE 2

| Project component / Pile type | Number of piles | Number of rock sockets | Number of tension anchors | Average vibratory duration per pile (minutes) | Average drilling duration for rock sockets per pile (minutes) | Impact strikes per pile | Estimated total number of hours | Average piles per day (range) | Days of installation and removal |
|---|---|---|---|---|---|---|---|---|---|
| Revilla Refurbish Existing Ferry Berth Facility: | | | | | | | | | |
| 24'' Pile Diameter | 1 | ..... | ..... | 30 | ..... | 50 | 1 | 1 | 1 |
| 24'' Pile Diameter (Removal) | 1 | ..... | ..... | 30 | ..... | N/A | 1 | 1 | 1 |
| Gravina Refurbish Existing Ferry Berth Facility: | | | | | | | | | |
| 24'' Pile Diameter | 15 | 0 | ..... | 15 | ..... | 50 | 11 | 1.5 (1–3) | 10 |
| 30'' Pile Diameter | 8 | 3 | 12 | 15 | 180 | 50 | 6 | 1.5 (1–3) | 7 |
| 16'' Pile Diameter (Removal) | 12 | ..... | ..... | 15 | ..... | ..... | 2 | 1.5 (1–3) | 8 |
| Phase 2 Total | 24 (+13 Removal) | 3 | ..... | ..... | ..... | ..... | ..... | ..... | 27 |

TABLE 4—NUMBER OF TEMPORARY PILES TO BE INSTALLED AND REMOVED FOR EACH PROJECT COMPONENT AND STRUCTURE DURING PHASE 2

| Project component | Number of temporary piles | Average vibratory duration per pile for installation (minutes) | Average vibratory duration per pile for removal (minutes) | Days of installation | Days of removal | Piles per day |
|---|---|---|---|---|---|---|
| Revilla Refurbish Existing Ferry Berth Facility | 0 | 0 | 0 | 0 | 0 | 0 |
| Gravina Refurbish Existing Ferry Berth Facility | 12 | 15 | 15 | 2 to 3 | 2 to 3 | 4 to 6 |
| Total | 12 | 180 (3 hours) | 180 (3 hours) | 2 to 3 | 2 to 3 | ..... |

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats

may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 5 lists all species with expected potential for occurrence in waters near Ketchikan, Alaska 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 (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (*e.g.,* Muto *et al.,* 2018) except for gray whale, which could occur in the proposed project area and is assessed in the U.S. Pacific SARs (Carretta *et al.* 2018). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.,* 2018, Carretta *et al.* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 5—MARINE MAMMALS THAT COULD OCCUR IN THE PROPOSED PROJECT AREA

| 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 Eschrichtiidae: | | | | | | |
| Gray Whale | *Eschrichtius robustus* | Eastern North Pacific | -, -, N | 26,960 (0.05, 25,849, 2016) | 801 | 138 |
| Family Balaenidae: | | | | | | |
| Humpback whale | *Megaptera novaeangliae* | Central North Pacific | E, D, Y | 10,103 (0.3; 7,890; 2006) | 83 | 25 |
| Minke whale | *Balaenoptera acutorostrata* | Alaska | -, N | N.A. | N.A. | N.A. |
| Fin whale | *Balaenoptera physalus* | Northeast Pacific | E, D, Y | N.A. | 5.1 | 0.6 |
| **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) | 24 | 1 |
| | | West Coast Transient | -, N | 243 (N.A, 243, 2009) | 2.4 | 0 |
| | | Northern Resident | -, N | 261 (N.A.; 261, 2011 | 1.96 | 0 |
| 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) | 8.95 | 34 |
| Dall's porpoise | *Phocoenoides dalli* | Alaska | -, N | 83400 (0.097, N.A., 1993) | N.A. | 38 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | |
| Steller sea lion | *Eumetopias 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]–Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2]–NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin 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). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed project areas are included in Table 5. However, the spatial occurrence of gray whale and fin whale is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Gray whales have not been reported by any local experts or recorded in monitoring reports and it would be extremely unlikely for a gray whale to enter Tongass Narrows or the small portions of Revillagigedo Channel this project will impact. Similarly for fin whale, sightings have not been reported and it would be unlikely for a fin whale to enter the project area as they are generally associated with deeper, more offshore waters.

*Steller Sea Lion*

Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern Distinct Population Segments (DPSs; western and eastern stocks) in 1997 (62 FR 24345). The eastern DPS remained classified as threatened until it was

delisted in November 2013. The current minimum abundance estimate for the eastern DPS of Steller sea lions is 41,638 individuals (Muto *et al.* 2018). The western DPS (those individuals west of 144° W longitude or Cape Suckling, Alaska) was upgraded to endangered status following separation of the DPSs, and it remains endangered today. There is regular movement of both DPSs across this 144° W longitude boundary (Jemison *et al.,* 2013), however, due to the distance from this DPS boundary, it is likely that only eastern DPS Steller sea lions are present in the project area. Therefore, animals potentially affected by the project are assumed to be part of the eastern DPS. Sea lions from the western DPS, which is listed as endangered under the Endangered Species Act (ESA), are not likely to be affected by the proposed activity and are not discussed further.

The nearest known Steller sea lion haulout is located approximately 17 miles west/northwest of Ketchikan on Grindall Island (Figure 4–1 in application). Summer counts of adult and juvenile sea lions at this haulout since 2000 have averaged approximately 191 individuals, with a range from 6 in 2009 to 378 in 2008. Only two winter surveys of this haulout have occurred. In March 1993, a total of 239 individuals were recorded, and in December 1994, a total of 211 individuals were recorded. No sea lion pups have been observed at this haulout during surveys. Although this is a limited sample, it suggests that abundance may be consistent year-round at the Grindall Island haulout.

No systematic studies of sea lion abundance or distribution have occurred in Tongass Narrows. Anecdotal reports suggest that Steller sea lions may be found in Tongass Narrows year-round, with an increase in abundance from March to early May during the herring spawning season, and another increase in late summer associated with salmon runs. Overall sea lion presence in Tongass Narrows tends to be lower in summer than in winter (FHWA 2017). During summer, Steller sea lions may aggregate outside the project area, at rookery and haulout sites. Monitoring during construction of the Ketchikan Ferry Terminal in summer (July 16 through August 17, 2016) did not record any Steller sea lions (ADOT&PF 2015).

Marine mammal monitoring was conducted during construction of the Icy Strait Point Cruise Ship Terminal in Hoonah, Alaska, between June 1, 2015, and January 25, 2016. This site is approximately 387 km (240 miles) Northwest of Tongass Narrows, but still in Southeast Alaska and a useful prior project for comparison. These data from Icy Strait Point support similar estimates described above and are an example of how abundance can fluctuate throughout the season. Steller sea lions were observed on 47 of the 135 days of monitoring. Although sea lions were observed during all times of the year, observations peaked between late August and mid-October (Berger ABAM 2016).

Sea lions are known to transit through Tongass Narrows while pursuing prey. Steller sea lions are known to follow fishing vessels, and may congregate in small numbers at seafood processing facilities and hatcheries or at the mouths of rivers and creeks containing hatcheries, where large numbers of salmon congregate in late summer. Three seafood processing facilities are located east of the proposed berth location on Revilla Island, and two salmon hatcheries operated by the Alaska Department of Fish & Game (ADF&G) are located east of the project area. Steller sea lions may aggregate near the mouth of Ketchikan Creek, where a hatchery upstream supports a summer salmon run. The Creek mouth is more than 4 kilometers (2.5 miles) from both ferry berth sites, and is positioned behind the cruise ship terminal and within the small boat harbor. In addition to these locations, anecdotal information from a local kayaking company suggests that there are Steller sea lions present at Gravina Point, near the southwest entrance to Tongass Narrows.

Harbor Seals

Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. Harbor seals are not listed as endangered or threatened under the ESA. In 2010, harbor seals in Alaska were partitioned into 12 separate stocks based largely on genetic structure (Allen and Angliss 2010). Harbor seals in Tongass Narrows are recognized as part of the Clarence Strait stock, which is increasing in population size (Muto *et al.* 2018). They haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters. Harbor seals are generally non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Muto, 2017a).

No systematic studies of harbor seal abundance or distribution have occurred in Tongass Narrows. Aerial surveys conducted in August 2011 did not record any harbor seal haulouts in Tongass Narrows, but several haulouts were located on the outer shores of Gravina Island (London *et al.* 2015). There are no known large harbor seal haulouts in Tongass Narrows. Harbor seals have been observed hauled out on docks in Ketchikan Harbor.

Anecdotal observations indicate that harbor seals are common in Tongass Narrows, although no data exist to quantify abundance. Two salmon hatcheries operated by ADF&G are located east of the project area. Like Steller sea lions, harbor seals may aggregate near the mouth of Ketchikan Creek when salmon are running in summer. The creek mouth is more than 4 kilometers (2.5 miles) from the project component sites, and is positioned behind both the cruise ship terminal and within the small boat harbor.

Harbor Porpoise

In the eastern North Pacific Ocean, the harbor porpoise ranges from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California. Harbor porpoises are not listed as endangered or threatened under the ESA. In Alaska, harbor porpoises are currently divided into three stocks, based primarily on geography: The Bering Sea stock, the Southeast Alaska stock, and the Gulf of Alaska stock. The Southeast Alaska stock ranges from Cape Suckling to the Canadian border (Muto *et al.* 2018). Only the Southeast Alaska stock is considered in this proposed IHA because the other stocks occur outside the geographic area under consideration. Harbor porpoises frequent primarily coastal waters in Southeast Alaska (Dahlheim *et al.* 2009) and occur most frequently in waters less than 100 meters (328 feet) deep (Hobbs and Waite 2010).

Abundance data for harbor porpoises in Southeast Alaska were collected during 18 seasonal surveys spanning 22 years, from 1991 to 2012 (Dahlheim *et al.* 2015). The project area and Tongass Narrows fall within the Clarence Strait to Ketchikan region, as identified by this study for the survey effort.

Studies of harbor porpoises reported no evidence of seasonal changes in distribution for the inland waters of Southeast Alaska (Dahlheim *et al.* 2009). Their small overall size, lack of a visible blow, low dorsal fins and overall low profile, and short surfacing time make them difficult to spot (Dahlheim *et al.* 2015), likely reducing identification and

reporting of this species, and these estimates therefore may be low.

Harbor porpoises were observed on 19 days during 135 days of monitoring in Hoonah, Alaska, primarily between June and September (Berger ABAM 2016). Icy Strait was identified as an area with relatively high densities of harbor porpoises in the Dahlheim *et al.* (2015) study, and the Ketchikan area densities are expected to be much lower. This is supported by anecdotal estimates of harbor porpoise abundance.

Anecdotal reports (see IHA Application) specific to Tongass Narrows indicate that harbor porpoises are rarely observed in the project area, and actual sightings are less common than those suggested by Dahlheim *et al.* (2015). Harbor porpoises prefer shallower waters (Dahlheim *et al.* 2015) and generally are not attracted to areas with elevated levels of vessel activity and noise such as Tongass Narrows. Harbor porpoises are expected to be present in the project area only a few times per year.

Dall's Porpoise

Dall's porpoises are found throughout the North Pacific, from southern Japan to southern California north to the Bering Sea. Dall's porpoises are not listed as endangered or threatened under the ESA. All Dall's porpoises in Alaska are members of the Alaska stock, and those off California, Oregon, and Washington are part of a separate stock. This species can be found in offshore, inshore, and nearshore habitat.

No systematic studies of Dall's porpoise abundance or distribution have occurred in Tongass Narrows; however, surveys for cetaceans throughout Southeast Alaska were conducted between 1991 and 2007 (Dahlheim *et al.* 2009). The species is generally found in waters in excess of 600 feet (183 meters) deep (Dahlheim *et al.* 2009, Jefferson 2009), which do not occur in Tongass Narrows. Jefferson *et al.* (2019) presents historical survey data showing few sightings in the Ketchikan area, and based on these occurrence patterns, concludes that Dall's porpoise rarely come into narrow waterways, like Tongass Narrows. The mean group size in Southeast Alaska is estimated at approximately three individuals (Dahlheim *et al.* 2009, Jefferson 2019), although Freitag (2017, as cited in 83 FR 37473) suggested group sizes near Ketchikan range from 10 to 15 individuals. Although two individuals were observed near Hoonah during monitoring of the Icy Strait Point cruise ship terminal, both were in deeper offshore waters (Berger ABAM 2016) dissimilar to habitat found in the project area.

Anecdotal reports suggest that Dall's porpoises are found northwest of Ketchikan near the Guard Islands, where waters are deeper, as well as in deeper waters to the southeast of Tongass Narrows. Should Dall's porpoises occur in the project area, they would likely be present in March or April, given past observations in the region. Despite generalized water depth preferences, Dall's porpoises may occur in shallower waters. This species has a tendency to bow-ride with vessels and may occur in the project area incidentally a few times per year.

Pacific White-Sided Dolphin

Pacific white-sided dolphins are a pelagic species inhabiting temperate waters of the North Pacific Ocean and along the coasts of California, Oregon, Washington, and Alaska (Muto *et al.* 2018). Despite their distribution mostly in deep, offshore waters, they may also be found over the continental shelf and near shore waters, including inland waters of Southeast Alaska (Ferrero and Walker 1996). Pacific white-sided dolphins are not listed as endangered or threatened under the ESA. They are managed as two distinct stocks: The California/Oregon/Washington stock, and the North Pacific stock (north of 45° N, including Alaska).

Scientific studies and data are lacking relative to the presence or abundance of Pacific white-sided dolphins in or near Tongass Narrows. Although they generally prefer deeper and more-offshore waters, anecdotal reports suggest that Pacific white-sided dolphins have previously been observed in Tongass Narrows, although they have not been observed entering Tongass Narrows or nearby inter-island waterways in 15–20 years.

Pacific white-sided dolphins are rare in the inside passageways of Southeast Alaska. Most observations occur off the outer coast or in inland waterways near entrances to the open ocean. According to Muto (2018), aerial surveys in 1997 sighted one group of 164 Pacific white-sided dolphins in Dixon entrance to the south of Tongass Narrows. Surveys in April and May from 1991 to 1993 identified Pacific white-sided dolphins in Revillagigedo Channel, Behm Canal, and Clarence Strait (Dahlheim and Towell 1994). These areas are contiguous with the open ocean waters of Dixon Entrance. This observational data, combined with anecdotal information, indicates there is a rare, however, slight potential for Pacific white-sided dolphins to occur in the project area.

Killer Whale

Killer whales have been observed in all the world's oceans, but the highest densities occur in colder and more productive waters found at high latitudes (NMFS 2016a). Killer whales occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NMFS 2016a).

Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized within the Pacific U.S. Exclusive Economic Zone. This proposed IHA considers only the Eastern North Pacific Alaska Resident stock (Alaska Resident stock), Eastern North Pacific Northern Resident stock (Northern Resident stock), and West Coast Transient stock, because all other stocks occur outside the geographic area under consideration (Muto *et al.* 2018). Killer whales that have the potential to occur in Alaska are not listed as endangered or threatened under the ESA. Therefore, the ESA-listed southern resident killer whale would not be affected by the proposed activity.

Surveys between 1991 and 2007 encountered resident killer whales during all seasons throughout Southeast Alaska. Both residents and transients were common in a variety of habitats and all major waterways, including protected bays and inlets. There does not appear to be strong seasonal variation in abundance or distribution of killer whales, but there was substantial variability between years during this study (Dahlheim *et al.* 2009).

No systematic studies of killer whales have been conducted in or around Tongass Narrows. Killer whales were observed infrequently (11 of 135 days) during monitoring in Hoonah, and most were recorded in deeper, offshore waters (Berger ABAM 2016). Anecdotal reports suggest that large pods of killer whales (as many as 80 individuals, but generally between 25 and 40 individuals) are not uncommon in May, June, and July when the king salmon are running. During the rest of the year, killer whales occur irregularly in pods of 6 to 12 or more individuals. Large pods would be indicative of the Alaska resident population, which travels and hunts in large social groups.

Although killer whales may occur in large numbers, they generally form large pods and would incur fewer work stoppages than their numbers suggest. Killer whales tend to transit through Tongass Narrows, and do not linger in the project area. Killer whales are observed on average about once every 2

weeks in Tongass Narrows, and abundance increases between May and July. A previous incidental take authorization in the Ketchikan area (83 FR 37473) has estimated that one group of killer whales is present in Tongass Narrows once a month.

Transient killer whales are often found in long-term stable social units (pods) of 1 to 16 whales. Average pod sizes in Southeast Alaska were 6.0 in spring, 5.0 in summer, and 3.9 in fall. Pod sizes of transient whales are generally smaller than those of resident social groups. Resident killer whales occur in larger pods, ranging from 7 to 70 whales that are seen in association with one another more than 50 percent of the time (Dahlheim *et al.* 2009; NMFS 2016b). In Southeast Alaska, resident killer whale mean pod size was approximately 21.5 in spring, 32.3 in summer, and 19.3 in fall (Dahlheim *et al.* 2009).

Humpback Whale

Humpback whales worldwide were designated as ''endangered'' under the Endangered Species Conservation Act in 1970, and were listed under the ESA at its inception in 1973. However, on 08 September 2016, NMFS published a final decision that changed the status of humpback whales under the ESA (81 FR 62259), effective 11 October 2016. The decision recognized the existence of 14 DPSs based on distinct breeding areas in tropical and temperate waters. Five of the 14 DPSs were classified under the ESA (4 endangered and 1 threatened), while the other 9 DPSs were delisted. Humpback whales found in the project area are predominantly members of the Hawaii DPS, which is not listed under the ESA. However, based on a comprehensive photo-identification study, members of the Mexico DPS, which is listed as threatened, are known to occur in Southeast Alaska. Members of different DPSs are known to intermix on feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. Approximately 6.1 percent of all humpback whales in Southeast Alaska and northern British Columbia are members of the Mexico DPS, while all others are members of the Hawaii DPS (Wade *et al.* 2016).

The DPSs of humpback whales that were identified through the ESA listing process do not necessarily equate to the existing MMPA stocks. The stock delineations of humpback whales under the MMPA are currently under review. Until this review is complete, NMFS considers humpback whales in Southeast Alaska to be part of the Central North Pacific stock, with a status of endangered under the ESA and designations of strategic and depleted under the MMPA (Muto *et al.* 2018).

Humpback whales are found throughout Southeast Alaska in a variety of marine environments, including open-ocean, near-shore waters, and areas with strong tidal currents (Dahlheim *et al.* 2009). Most humpback whales are migratory and spend winters in the breeding grounds off either Hawaii or Mexico. Humpback whales generally arrive in Southeast Alaska in March and return to their wintering grounds in November. Some humpback whales depart late or arrive early to feeding grounds, and therefore the species occurs in Southeast Alaska year-round (Straley 1990). Across the region, there have been no recent estimates of humpback whale density.

No systematic studies have documented humpback whale abundance near Ketchikan. Anecdotal information (See Section 3 of IHA Application) suggests that this species is present in low numbers year-round in Tongass Narrows, with the highest abundance during summer and fall. Anecdotal reports suggest that humpback whales are seen only once or twice per month, while more recently it has been suggested that the occurrence is more regular, such as once per week on average, and more seasonal. Humpbacks observed in Tongass Narrows are generally alone or in groups of one to three individuals. In August 2017, a group of six individuals was observed passing through Tongass Narrows several times per day, for several days in a row. Local residents reported that such high abundance is common in August and September. NMFS reported that airport ferry personnel, in 2018, observed a lone humpback whale in the area every few days for several months and a group of two humpback whales every other week (NMFS 2019).

A total of 226 humpback whales were recorded as takes during 135 days of monitoring in Hoonah, Alaska (Berger ABAM 2016). During Hoonah monitoring, as many as 18 whales were observed in a single day, but the 90th percentile of individuals per day was approximately 7. Humpback whales were observed on 84 of the 135 days and were most often seen as lone individuals, or in small groups. An average of 2 individuals was recorded as take each day of the construction program. Abundance of humpback whales did not appear to change substantially with time; however, there was a noticeable increase in activity during September and October (Berger ABAM 2016). Hoonah is approximately 240 miles north of Ketchikan near an area of known humpback concentrations, so these data do not directly support anticipated levels of abundance in Ketchikan as recently reported by interviewed locals (See Section 3 of IHA Application).

In the Biological Opinion provided to the US Army Corp of Engineers (USACE) for this ADOT&PF project, NMFS assumed the occurrence of humpback whales in the project area to be one (1) group of two (2) humpback whales within the Level B harassment zone twice each week. This assumption was also used to estimate take for this proposed IHA. The assumption was based on differences in abundance throughout the year, recent observations of larger groups of whales present during summer, and a higher than average frequency of occurrence in recent months (NMFS 2019).

Southeast Alaska is considered a biologically important area for feeding humpback whales between March and May (Ellison *et al.* 2012). Most humpback whales migrate to other regions during the winter to breed, but rare events of over-wintering humpbacks have been noted, (Straley 1990). It is thought that those humpbacks that remain in Southeast Alaska do so in response to the availability of winter schools of fish prey (Straley 1990).

Minke Whale

The population status of minke whales is considered stable throughout most of their range. Historically, commercial whaling reduced the population size of this species, but given their small size, they were never a primary target of whaling and did not experience the severe population declines as did larger cetaceans. Minke whales are not listed as endangered or threatened under the ESA. Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters. There is a dwarf form of minke whale found in the southern hemisphere, and the subspecies of Antarctic minke whales is found around the continent of Antarctica.

The International Whaling Commission has identified three stocks in the North Pacific: One near the Sea of Japan, a second in the rest of the western Pacific (west of 180°W), and a third, less concentrated stock, found throughout the eastern Pacific. NOAA further splits this third stock between Alaska whales and resident whales of California, Oregon, and Washington (Muto *et al.* 2018). Minke whales are found in all Alaska waters. There are no

population estimates for minke whales in Alaska. Surveys in Southeast Alaska have consistently identified individuals throughout inland waters in low numbers (Dahlheim *et al.* 2009).

Minke whales in Southeast Alaska are part of the Alaska stock (Muto *et al.* 2018). Dedicated surveys for cetaceans in Southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait, with small concentrations near the entrance of Glacier Bay (Dahlheim *et al.* 2009). All sightings were of single minke whales, except for a single sighting of multiple minke whales. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years. None of the interviews with local experts conducted by ADOT&PF reported winter sightings of minke whales in Southeast Alaska. Minke whales are expected to occur in Tongass Narrows no more than once per year.

*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 (2018) described generalized hearing ranges for these marine mammal hearing groups which were later adopted by Southall *et al* (2019) with slight changes to the naming convention of each hearing group. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 6.

TABLE 6—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Eight marine mammal species (six cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 6. Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species), two are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia *spp.*).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document 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, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

*Description of Sound Sources*

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a

result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). 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).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

Drilling of rock sockets would be conducted using a down-hole drill inserted through the hollow steel piles. A down-hole drill is a drill bit that drills through the bedrock using both rotary and percussion (impact) mechanisms that function at the bottom of the hole. This breaks up rock to allow removal of debris and insertion of the pile. The head extends so that the drilling takes place below the pile. The sounds produced by the down-the-hole drilling method are considered continuous as the noise from the drilling component is dominant. In addition, this method likely increases sound attenuation because the noise is primarily contained within the steel pile and below ground rather than impact hammer driving methods which occur at the top of the pile and introduce sound into the water column to a greater degree.

The likely or possible impacts of ADOT&PF's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal and drilling.

*Acoustic Impacts*

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and down-hole drilling is the primary means by which marine mammals may be harassed from ADOT&PF's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007, 2019). In general, exposure to pile driving and drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS

2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, 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. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds 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 (*Phoca largha*) and ringed (*Pusa hispida*) 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. No data are 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 Table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving, vibratory pile driving, and down-hole drilling. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the project area and not remaining for extended periods of time, the potential for TS declines.

*Behavioral Harassment*—Exposure to noise from pile driving and removal and drilling also has the potential to behaviorally disturb marine mammals. 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).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). 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). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

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.

In 2016, ADOT&PF documented observations of marine mammals during construction activities (*i.e.,* pile driving and down-hole drilling) at the Kodiak Ferry Dock (ABR 2016) in the Gulf of Alaska. In the marine mammal monitoring report for that project, 1,281 Steller sea lions were observed within the Level B harassment zone during pile driving or drilling (*i.e.,* documented as take by Level B harassment). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer

whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving and down-hole drilling projects in Alaska have observed similar behaviors (for example, the Biorka Island Dock Replacement Project *https://www.fisheries.noaa.gov/action/incidental-take-authorization-faa-biorka-island-dock-replacement-project-sitka-ak*).

*Masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, 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. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

*Airborne Acoustic Effects*—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and down-hole drilling that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

*Marine Mammal Habitat Effects*

The proposed activities at the project area would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area during the construction window, but there are times of increased foraging during periods of forage fish and salmonid spawning. ADOT&PF construction activities in Tongass Narrows could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving, elevated levels of underwater noise would ensonify a portion of Tongass Narrows and nearby waters where both fish and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater noise. These sounds would not be detectable at the nearest known Steller sea lion haulouts (Figure 4–1 in IHA application), and there are no known harbor seal haulouts in Tongass Narrows.

The area likely impacted by the project includes much of Tongass Narrows, but overall this area is relatively small compared to the available habitat in the surrounding area including Revillagigedo Channel, Behm Canal, and Clarence Strait. Pile installation/removal and drilling may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to minimal for marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

In-water Construction Effects on Potential Prey — Construction activities would produce continuous (*i.e.,* vibratory pile driving and down-hole drilling) and intermittent (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Revillagigedo Channel, Behm Canal, and Clarence Strait. Additionally, the City of Ketchikan within Tongass Narrows has a busy industrial water front, and human impact lessens the value of the area as foraging habitat. There are times of known seasonal marine mammal foraging in Tongass Narrows around fish processing/hatchery infrastructure or when fish are congregating, but the impacted areas of Tongass Narrows are a small portion of the total foraging habitat available in the region. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe of the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect eulachon, herring, and juvenile salmonid outmigratory routes in the project area. Salmon and forage fish, like eulachon and herring, form a significant prey base for Steller sea lions and are major components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur only in the immediate vicinity of construction activities and to dissipate quickly with tidal cycles. Given the limited area affected and high tidal dilution rates any effects on fish are expected to be minor.

Additionally, the presence of transient killer whales means some marine mammal species are also possible prey (harbor seals, harbor porpoises). ADOT&PF's pile driving, pile removal, and drilling are expected to result in limited instances of take by Level B and Level A harassment on these smaller marine mammals. That, as well as the fact that ADOT&PF is impacting a small portion of the total available marine mammal habitat means that there will be minimal impact on these marine mammals as prey.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the small area being affected relative to available nearby habitat, pile driving and drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species or other prey. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through these IHAs, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

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 the sources (*i.e.,* impact/vibratory pile driving and drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals and some small amount of TTS. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes, high frequency species and phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for, mid-frequency species and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable, and result in no take by Level A harassment for mysticetes.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Due to the lack of marine marine mammal density, NMFS relied local occurrence data and average group size to estimate take. Below, we describe the factors considered here in more detail and present the proposed take estimates.

*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 (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.,* 2012). 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) (microPascal root mean square) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Typically, and especially in cases where PTS is predicted, NMFS anticipates that some number of individuals may incur TTS. However, it is not necessary to separately quantify those takes, as it is very unlikely that an individual marine mammal would be exposed at the levels and duration necessary to incur TTS without also being exposed to the levels

associated with behavioral harassment and, therefore, we expect any potential TTS takes to be captured by the estimated takes by behavioral harassment.

Both phases of ADOT&PF's proposed activity includes the use of continuous (vibratory pile driving/removal and drilling) and impulsive (impact pile driving) sources, and therefore both the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018) 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). Both phases of ADOT&PF's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal and drilling) sources.

These thresholds are provided in Table 7 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 7—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group | PTS Onset acoustic thresholds * (received level) | |
|---|---|---|
| | 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, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal, and drilling).

Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth. An impact hammer would then generally be used to place the pile at its intended depth. The actual durations of each installation method vary depending on the type and size of the pile. An impact hammer is a steel device that works like a piston, producing a series of independent strikes to drive the pile. Impact hammering typically generates the loudest noise associated with pile installation.

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels (see Table 6). Note that piles of differing sizes have different sound source levels (SSLs).

Empirical data from recent ADOT&PF sound source verification (SSV) studies at Ketchikan were used to estimate sound source levels for vibratory and impact driving of 30-inch steel pipe piles and Kodiak for drilling (Denes *et al.* 2016). Data from Ketchikan was used because of its proximity to this proposed project in Tongass Narrows and Kodiak drilling data was used as a proxy here because of its relative proximity. However, the use of data from Alaska sites was not appropriate in all instances. Details are described below.

The source level for rock socket drilling was derived from the above mentioned ADOT&PF SSV study at Kodiak, Alaska. The reported median source value for drilling was determined to be 166.2 dB rms for all pile types (Denes *et al.* 2016, Table 72).

For vibratory driving of 24-inch steel piles, data from a Navy pile driving project in the Puget Sound, WA was reviewed (Navy, 2015). From this review, ADOT&PF determined the Navy's suggested source value of 161 dB rms was an appropriate proxy source value, and NMFS concurs. Because the source value of smaller piles of the same general type (steel in this case) are not expected to exceed a larger pile, the same 161 dB rms source value was used for 18-inch and 16-inch steel piles. This assumption conforms with source values presented in Navy (2015) for a project using 16-inch steel piles at Naval Base Kitsap in Bangor, WA.

For vibratory driving of both 27.6-inch and 30.3-inch sheet piles, ADOT&PF used a source level of 160 dB rms. These source levels were reported in Caltrans (2015) summary tables for 24-inch steel sheet piles, and NMFS concurs that this value was an acceptable proxy.

Finally, ADOT&PF used source values of 177 dB SEL and 190 dB rms for impact driving of 24-inch and 18-inch steel piles. These values were determined based on summary values presented in Caltrans (2015) for impact driving of 24-inch steel piles. NMFS concurs that the same source value was

an acceptable proxy for impact driving of 18-inch steel piles.

TABLE 8—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DRILLING, AND VIBRATORY PILE REMOVAL

| Method and pile type | Sound source level at 10 meters | | | Literature source |
|---|---|---|---|---|
| Vibratory hammer | dB rms | | | |
| 30-inch steel piles | 162 | | | Denes *et al.* 2016, Table 72. |
| 24-inch steel piles | 161 | | | Navy 2015. |
| 20-inch steel piles | 161 | | | Navy 2015. |
| 18-inch steel piles | 161 | | | Navy 2015. |
| 16-inch steel piles | 161 | | | Navy 2015. |
| 27.6-inch sheet pile | 160 | | | Caltrans 2015. |
| 30.3-inch sheet pile | 160 | | | Caltrans 2015. |
| Drilling rock sockets | dB rms | | | |
| All pile diameters | 166.2 | | | Denes *et al.* 2016, Table 72. |
| Impact hammer | dB rms | dB SEL | dB peak | |
| 30-inch steel piles | 195 | 181 | 209 | Denes *et al.* 2016, Table 72. |
| 24-inch steel piles | 190 | 177 | 203 | Caltrans 2015. |
| 18-inch steel piles | 190 | 177 | 203 | Caltrans 2015. |

**Note:** It is assumed that noise levels during pile installation and removal are similar. Use of an impact hammer will be limited to 5–10 minutes per pile, if necessary. It is assumed that drilling produces the same SSL regardless of down-hole diameter. SEL = sound exposure level; dB peak = peak sound level; rms = root mean square.

*Level B Harassment Zones*

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:

$$TL = B * \mathrm{Log10}\,(R1/R2),$$

Where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the, practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for ADOT&PFs proposed activity.

Using the practical spreading model, ADOT&PF determined underwater noise would fall below the behavioral effects threshold of 120 dB rms for marine mammals at a maximum radial distance of 12,023 m for rock socket drilling. This distance determines the maximum Level B harassment zone for the project. Other activities, including vibratory and impact pile driving, will have smaller Level B harassment zones. All Level B harassment isopleths are reported in Table 9 below and visualized in Figure 6–3 (Phase 1) and Figure 6–7 (Phase 2) in the IHA Application. It should be noted that based on the geography of Tongass Narrows and the surrounding islands, sound will not reach the full distance of the Level B harassment isopleth in all directions. Generally, due to interaction with land, only a thin slice of the possible area is ensonified to the full distance of the Level B harassment isopleth.

TABLE 9—CALCULATED DISTANCES TO LEVEL B HARASSMENT ISOPLETHS AND ENSONIFIED AREAS DURING PILE INSTALLATION AND REMOVAL

| Pile size | Isopleth-impact (m) (160 dB) | Impact ($km^2$) | Isopleth-vibratory (m) (120 dB) | Vibratory ($km^2$) | Isopleth-drilling (m) (120 dB) | Drilling ($km^2$) |
|---|---|---|---|---|---|---|
| Phase 1 Revilla side: | | | | | | |
| 24-inch piles | 1,000 | 0.780348 | 5,412 | 3.224297 | | |
| 30-inch piles | 2,154 | 1.504843 | 6,310 | 3.584237 | | |
| Sheet pile | | | 4,642 | 2.856483 | | |
| Phase 1 Gravina side: | | | | | | |
| 18-inch | 1,000 | 1.297393 | 5,412 | 9.361061 | | |
| 24-inch piles | 1,000 | 1.297393 | 5,412 | 9.361061 | 12,023 | 23.618314 |
| 30-inch piles | 2,154 | 3.077801 | 6,310 | 11.11939 | 12,023 | 23.618314 |
| Sheet pile | | | 4,642 | 7.712967 | | |
| Phase 2 Revilla side: | | | | | | |
| 24-inch | 1,000 | 0.780348 | 5,412 | 3.187212 | | |
| Phase 2 Gravina side: | | | | | | |
| 16-inch | | | 5,412 | 8.03168 | | |
| 24-inch piles | 1,000 | 1.297393 | 5,412 | 8.03168 | | |

TABLE 9—CALCULATED DISTANCES TO LEVEL B HARASSMENT ISOPLETHS AND ENSONIFIED AREAS DURING PILE INSTALLATION AND REMOVAL—Continued

| Pile size | Isopleth-impact (m) (160 dB) | Impact ($km^2$) | Isopleth-vibratory (m) (120 dB) | Vibratory ($km^2$) | Isopleth-drilling (m) (120 dB) | Drilling ($km^2$) |
|---|---|---|---|---|---|---|
| 30-inch piles | 2,154 | 3.077801 | 6,310 | 9.472484 | 12,023 | 23.618314 |

*Level A Harassment Zones*

When the NMFS 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 may result in some degree of overestimate of take by Level A harassment. 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 such as impact/vibratory pile driving or drilling, NMFS 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 isopleths are reported below (Table 10).

Level A harassment thresholds for impulsive sound sources (impact pile driving) are defined for both SELcum and Peak SPL with the threshold that results in the largest modeled isopleth for each marine mammal hearing group used to establish the Level A harassment isopleth. In this project, Level A harassment isopleths based on SELcum were always larger than those based on Peak SPL. It should be noted that there is a duration component when calculating the Level A harassment isopleth based on SELcum, and this duration depends on the number of piles that will be driven in a day and strikes per pile. For some activities, ADOT&PF has proposed to drive variable numbers of piles per day throughout the project (See ''Piles Installed or Removed per day'' in Table 9), and determine at the beginning of each pile driving day, how many piles will be driven that day. Here, this flexibility has been accounted for by modeling multiple durations for the activity, and determining the relevant isopleths.

TABLE 10—PARAMETERS OF PILE DRIVING AND DRILLING ACTIVITY USED IN USER SPREADSHEET

| Equipment type | Vibratory pile removal | Vibratory pile driver (installation of sheet piles) | Vibratory pile driver (installation of 30-inch steel piles) | Vibratory pile driver (installation of 24-inch steel piles) | Vibratory pile driver (installation of 24-inch steel piles) | Vibratory pile driver (installation of 18-inch steel piles) | Impact pile driver (30-inch steel piles) | Impact pile driver (24-inch steel piles) | Impact pile driver (18-inch steel piles) | Rock socket drilling |
|---|---|---|---|---|---|---|---|---|---|---|
| Spreadsheet tab used | Non-impulsive, continuous | Non-impulsive, continuous | Non-impulsive, continuous | Non-impulsive, continuous | Non-impulsive, continuous | Non-impulsive, continuous | Impulsive, non-continuous | Impulsive, non-continuous | Impulsive, non-continuous | Non-impulsive, continuous |
| Source Level | 161 SPL | 160 SPL | 162 SPL | 161 SPL | 161 SPL | 161 SPL | 181 SEL | 177 SEL | 177 SEL | 166.2 SPL. |
| Weighting Factor Adjustment (kHz) | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2.5 | 2 | 2 | 2 | 2. |
| (a) Activity duration (hours) within 24 hours. (b) Number of strikes per pile. (c) Number of piles per day. | (a) 2.5, 5 * 30 mins. | (a) 2.5 (15 mins * 10). | (a) 1.5, 3 * 30 mins. | (a) 1.5, 3 * 30 mins. | (a) 1.5, 3 * 30 mins. | (a) 1.5, 3 * 30 mins. | (b) 200 or 50 (c) 1 to 3. | (b) 200 or 50 (c) 1 to 3. | (b) 50 (c) 1 to 3. | (a) 9 or 6.* |
| Propagation (xLogR) | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15. |
| Distance of source level measurement (meters)+. | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10. |

* Duration estimates for rock socket drilling are based on assumption of drilling 3 rock sockets per day. 9 hours would be the estimated duration for drilling related to 30 inch piles, and 6 hours would be the duration for drilling related to 24 and 18 inch piles.

** For specifics of what number of strikes and number of piles will be used in a given situation, please refer to Table 1 and Table 3.

TABLE 11—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

| Activity | Pile diameter(s) | Minutes per pile or strikes per pile | Piles installed or removed per day | Level A harassment isopleth distance (meters) | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | Cetaceans | | | Pinnipeds | |
| | | | | LF | MF | HF | PW | OW |
| Vibratory Installation | 30-inch | 30 Minutes | 3 | 11 | <1 | 15 | 6 | <1 |
| | 24-inch, 20-inch, 18-inch. | 15–30 Minutes | 3 | 9 | <1 | 13 | 5 | <1 |
| | 27.6-inch sheet pile, 30.3-inch sheet pile. | 15 Minutes | 10 | 11 | 1 | 16 | 7 | <1 |
| Vibratory Removal | 24-inch | 30 Minutes | 5 | 13 | 1 | 19 | 8 | <1 |
| | 16-inch | | | | | | | |
| Drilling Rock Sockets | 30-inch | 180 Minutes | 3 | 66 | 4 | 58 | 36 | 3 |
| | 24-inch, 18-inch | 120 Minutes | 3 | 51 | 3 | 45 | 27 | 2 |
| Impact Installation | 30-inch | 50 Strikes | 3 | 208 | 8 | 247 | 111 | 9 |
| | | 50 Strikes | 2 | 159 | 6 | 189 | 85 | 7 |
| | | 50 Strikes | 1 | 100 | 4 | 119 | 54 | 4 |
| | | 200 Strikes | 3 | 523 | 19 | 623 | 280 | 21 |
| | | 200 Strikes | 2 | 399 | 15 | 476 | 214 | 16 |
| | | 200 Strikes | 1 | 252 | 9 | 300 | 135 | 10 |
| Impact Installation | 24-inch | 50 Strikes | 3 | 113 | 4 | 134 | 61 | 5 |
| | | 50 Strikes | 2 | 86 | 3 | 102 | 46 | 4 |
| | | 50 Strikes | 1 | 54 | 2 | 65 | 29 | 3 |
| | | 200 Strikes | 3 | 283 | 11 | 337 | 152 | 11 |
| | | 200 Strikes | 2 | 216 | 8 | 258 | 116 | 9 |
| | | 200 Strikes | 1 | 136 | 5 | 162 | 73 | 6 |
| Impact Installation | 18-inch | 50 Strikes | 3 | 113 | 4 | 134 | 61 | 5 |
| | | 50 Strikes | 2 | 86 | 3 | 102 | 46 | 4 |
| | | 50 Strikes | 1 | 54 | 2 | 65 | 29 | 3 |

**Note:** A 10-meter shutdown zone will be implemented for all species and activity types to prevent direct injury of marine mammals.

*Marine Mammal Occurrence and Take Calculation and Estimation*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Additionally, we describe how the occurrence information is brought together to produce a quantitative take estimate for each phase. Table 12 and 13 below show take from Phase 1 and Phase 2, respectively, as a percentage of population for each of the species.

Steller Sea Lion

Steller sea lion abundance in the Tongass Narrows area is not well known. No systematic studies of Steller sea lions have been conducted in or near the Tongass Narrows area. Steller sea lions are known to occur year-round and local residents report observing Steller sea lions about once or twice per week (based on communication outlined in Section 3 of the IHA application). Abundance appears to increase during herring runs (March to May) and salmon runs (July to September). Group sizes are generally 6 to 10 individuals (Freitag 2017 as cited in 83 FR 37473) but have been reported to reach 80 animals (HDR 2003). Tongass Narrows represents an area of high anthropogenic activity that sea lions would normally avoid, but at least three seafood processing plants and two fish hatcheries may be attractants to these opportunistic scavengers and predators. Sea lions are generally unafraid of humans when food sources are available. For these reasons, we conservatively estimate that one group of 10 Steller sea lions may be present in the project area each day, but this occurrence rate may as much as double (20 Steller sea lions per day) during periods of increased abundance associated with the herring and salmon runs (March to May and July to September).

*Take Estimation for Phase 1:* During Phase 1, we anticipate that one large group (10 individuals) may be present in the Level B harassment zone once per day. However, as discussed above, we anticipate that exposure may be as much as twice this rate during March, April, May, July, August, and September, due to the increased presence of prey. Therefore, we anticipate that two large groups (20 individuals) may be present in the Level B harassment zone each day during these months (approximately half of Phase 1). Therefore, we estimate a total of 2,160 potential takes of Steller sea lions by Level B harassment (*i.e.,* 1 group of 10 sea lions per day × 72 days [or half of Phase 1] + 2 groups of 10 sea lions per day × 72 days = 2,160 sea lions) (Table 12).

Take by Level A harassment is not expected for Steller sea lions in Phase 1, because of the small Level A harassment zones for otarrids (Table 11) and the expected effectiveness of the proposed monitoring and mitigation measures discussed below.

*Take Estimation for Phase 2:* During Phase 2, we anticipate Steller sea lions would be exposed at the same rate as during Phase 1. Phase 2 construction is planned to occur in the months of April, May and June. Therefore, we expect that one large group (10 individuals) may be present in the Level B harassment zone once per day for 9 days in June, with an increase to 2 large groups per day when fish runs occur for 9 days each month in April and May. Therefore, we estimate a total of 450 potential takes of Steller sea lions by Level B harassment (*i.e.,* 1 group of 10 sea lions per day × 9 days in June + 2 groups of 10 sea lions per day × 9 days per month in both April and May = 450 sea lions) (Table 13).

Take by Level A harassment is not expected for Steller sea lions in Phase 2, because of the small Level A harassment zones for otarrids (Table 11) and the expected effectiveness of the proposed monitoring and mitigation measures discussed below.

Harbor Seal

Harbor seal densities in the Tongass Narrows area are not well known. No systematic studies of harbor seals have been conducted in or near Tongass Narrows. They are known to occur year-round with little seasonal variation in abundance (Freitag 2017 as cited in 83 FR 37473) and local experts estimate that there are about 1 to 3 harbor seals in Tongass Narrows every day, in addition to those that congregate near

the seafood processing plants and fish hatcheries. Based on this knowledge, the expected maximum group size in Tongass Narrows is three individuals. Harbor seals are known to be curious and may approach novel activity. For these reasons we conservatively estimate that up to two groups of 3 harbor seals per group could be exposed to project-related underwater noise each day. Additionally, a smaller number of harbor seals could occasionally be present in the Level A harassment (PTS) zone and exposed to sound levels for a duration expected to result in take by Level A harassment. To account for these uncommon instances, ADOT&PF assumed and NMFS agrees that the equivalent of six groups of three individuals may be exposed in the Level A harassment zone during the whole of Phase 1, and the equivalent of three groups of three individuals may be exposed during the whole of Phase 2. Because of the nature of take by Level A harassment (small zone size, factoring in duration of exposure) and possibility for a marine mammal group to be spread over a relatively large area compared to the Level A harassment zone, take by Level A harassment will likely not occur to an entire group at once. Despite being expected to occur on an individual basis, these group size estimates still serve as the basis for take estimation for harbor seals.

*Take Estimation for Phase 1:* During Phase 1, we anticipate that two groups of 3 individuals could be present in the Level B harassment zone once per day for a total of 864 takes of harbor seals by Level B harassment (*i.e.,* 6 individuals per day × 144 days = 864 seals) (Table 12).

During Phase 1, it is possible, but unlikely, that harbor seals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take. Therefore, NMFS is proposing take by Level A harassment for the equivalent of six groups (18 individuals) during Phase 1.

*Take Estimation for Phase 2:* During Phase 2, we anticipate that two groups of 3 individuals could be present in the Level B harassment zone once per day for a total of 162 takes of harbor seals by Level B harassment (*i.e.,* 6 individuals per day × 27 days = 162 seals) (Table 11).

During Phase 2, we anticipate that the equivalent of three groups of 3 individuals may be present in the Level A harassment zone without detection. Therefore, NMFS is proposing take by Level A harassment of 9 harbor seals during Phase 2.

Harbor Porpoise

Harbor porpoises are non-migratory; therefore, our occurrence estimates are not dependent on season. Freitag (2017 as cited in 83 FR 37473) observed harbor porpoises in Tongass Narrows zero to one time per month. Harbor porpoises observed in the project vicinity typically occur in groups of one to five animals with an estimated maximum group size of eight animals (83 FR 37473, August 1, 2018, Solstice 2018). For our impact analysis, we are considering a group to consist of five animals, a value on the high end of the typical group size. Based on Freitag (2017), and supported by the reports of knowledgeable locals as described in the application, it is estimated that one group of harbor porpoises could enter Tongass Narrows and potentially be exposed to project related noise each month. Additionally harbor porpoises may rarely enter the applicable Level A harassment zone and be exposed to sound levels for a duration expected to result in take by Level A harassment, necessitating the proposed authorization of take by Level A harassment.

*Take Estimation for Phase 1:* During Phase 1, we estimate that two groups of harbor porpoises could be present in the Level B harassment zone each month for a total of 120 takes of harbor porpoises by Level B harassment (*i.e.,* 2 groups of 5 per month × 12 months = 120 harbor porpoises) (Table 12).

During Phase 1, we anticipate that 5 individuals (the equivalent of one group) may enter the Level A harassment zone undetected, and be exposed to sound levels for a duration expected to result in take by Level A harassment, approximately once during every 4 months of construction, for a total of 15 potential takes by Level A harassment.

*Take Estimation for Phase 2:* During Phase 2, we estimate that two groups of harbor porpoises may be present in the Level B harassment zone each month for a total of 30 individuals takes by Level B harassment (*i.e.,* 2 groups of 5 per month × 3 months = 30 harbor porpoises) (Table 13).

During Phase 2, we anticipate that the equivalent of two groups of 5 individuals may enter the Level A harassment zone undetected, and be exposed to sound levels for a duration expected to result in take by Level A harassment, during the 3 months of construction, for a total of 10 potential takes by Level A harassment.

Dall's Porpoise

Dall's porpoises are expected to only occur in the project area a few times per year. Their relative rarity is supported by Jefferson *et al.*'s (2019) presentation of historical survey data showing very few sightings in the Ketchikan area and conclusion that Dall's porpoise generally are rare in narrow waterways, like the Tongass Narrows. This species is non-migratory; therefore, our occurrence estimates are not dependent on season. We anticipate that one large Dall's porpoise pod (15 individuals) (Freitag 2017, as cited in 83 FR37473) may be present in the project area each month during construction. Additionally Dall's porpoises may rarely be present in the applicable Level A harassment zone and be exposed to sound levels for a duration expected to result in take by Level A harassment. To account for this rare circumstance, ADOT&PF assumes and NMFS concurs that the equivalent of one group of 15 individuals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take during the whole of Phase 1, and one group of 15 individuals may be present during the whole of Phase 2.

*Take Estimation for Phase 1:* During Phase 1, we estimate that 180 Dall's porpoises could be present in the Level B harassment zone (*i.e.,* 15 individuals per month × 12 months of construction = 180 total potential takes by Level B harassment) (Table 12).

During Phase 1, we anticipate that the equivalent of one group of 15 individuals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take, resulting in take by Level A harassment of 15 individual Dall's porpoises.

*Take Estimation for Phase 2:* During Phase 2, we estimate that 45 Dall's porpoises could be present in the Level B harassment zone (*i.e.,* 15 individuals per month × 3 months of construction = 45 takes by Level B harassment) (Table 13).

During Phase 2, we anticipate that the equivalent of one group of 15 individuals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take, resulting in take by Level A harassment of 15 individual Dall's porpoises.

Pacific White-Sided Dolphin

Pacific white-sided dolphins do not generally occur in the shallow, inland waterways of Southeast Alaska. There are no records of this species occurring in Tongass Narrows, and it is uncommon for individuals to occur in the proposed project area. However, historical sightings in nearby areas (Dahlheim and Towell 1994; Muto *et al.* 2018) and recent fluctuations in

distribution and abundance mean it is possible the species could be present.

To account for the possibility that this species may be present in the project area, we conservatively predict that one large group (50 individuals) of Pacific white-sided dolphins may experience take by Level B harassment during each phase of the proposed activity.

*Take Estimation for Phase 1:* 50 takes by Level B harassment (Table 12).

Take by Level A harassment is not expected for Pacific white-sided dolphins in Phase 1, because of the small Level A harassment zones for mid-frequency cetaceans (Table 9) and the expected effectiveness of the proposed monitoring and mitigation measures discussed below.

*Take Estimation for Phase 2:* 50 takes by Level B harassment (Table 13).

Take by Level A harassment is not expected for Pacific white-sided dolphins in Phase 2, because of the small Level A harassment zones for mid-frequency cetaceans (Table 9) and the expected effectiveness of the proposed monitoring and mitigation measures discussed below.

Killer Whale

Killer whales are observed in Tongass Narrows irregularly with peaks in abundance between May and July. A previous incidental take authorization in the Ketchikan area estimated killer whale occurrence in Tongass Narrows at one pod per month (Freitag 2017 as cited in 83 FR 37473). We estimate that one pod of 12 individuals may be present and exposed to project-related underwater noise every month except between May and July, when two pods of 12 individuals may be present and exposed.

*Take Estimation for Phase 1:* During Phase 1, we predict that a total of 180 killer whales may be present in the Level B harassment zone (*i.e.,* (12 exposures per month × 9 months) + (24 exposures per month × 3 months) = 180 takes of killer whales by Level B harassment) (Table 12).

Take by Level A harassment is not expected for killer whales in Phase 1, because of the small Level A harassment zones for mid-frequency cetaceans (Table 11) and the expected effectiveness of the proposed monitoring and mitigation measures discussed below.

*Take Estimation for Phase 2:* During Phase 2, we anticipate that construction would occur in April, May and June. Therefore, a total of 96 killer whales may be present in the Level B harassment zone (*i.e.,* 12 exposures per month × 1 month (April) + 24 exposures per month × 2 months (May, June) = 60 takes of killer whales by Level B harassment) (Table 13).

Take by Level A harassment is not expected for killer whales in Phase 2, because of the small Level A harassment zones for mid-frequency cetaceans (Table 11) and the expected effectiveness of the proposed monitoring and mitigation measures discussed below.

Humpback Whale

As discussed in ''Description of Marine Mammals in the Area of Specified Activities,'' locals have observed humpback whales about once per week, on average, in Tongass Narrows but there is evidence to suggest occurrence may be higher during some periods of the year. In the Biological Opinion provided to USACE for this ADOT&PF project, NMFS determined, based on the observations of local experts, that across the whole year, approximately one group of two individuals would be present in Tongass Narrows during ADOT&PF activity two times every seven days during pile driving, pile removal, and drilling activities.

*Take Estimation for Phase 1:* Based on the estimated occurrence rate of 2 groups of 2 individuals every 7 days and an anticipated timeframe of Phase 1 pile driving to occur over the course of 144 days (Table 1), an estimated total of 82 humpback whales are expected to be present in the Level B harassment zone during project activity. Of these 82 takes, based on the estimated proportion of humpback whales in Southeast Alaska that belong to the ESA-listed Mexico DPS, 6.1 percent (Wade *et al.,* 2016), there would be an estimated 5 takes by Level B harassment of Mexico DPS humpback whales. This estimated take of the Mexico DPS concurs with the assessment presented in Biological Opinion (Table 12).

Take by Level A harassment is not expected for humpback whales in Phase 1, because of the expected effectiveness of the proposed monitoring and mitigation measures and detecting and avoiding take by Level A harassment via shutdowns of pile installation equipment.

*Take Estimation for Phase 2:* Based on the estimated occurrence rate of 2 groups of 2 individuals every 7 days and an anticipated timeframe of Phase 2 pile driving to occur over the course of 27 days (Table 3), an estimated total of 16 humpback whales were initially expected to be present in the Level B harassment zone during project activity. At the ADOT&PF's request, and based on the analysis in the Biological Opinion, this take estimate for Phase 2 has been increased to 17 takes by Level B harassment. The difference in calculations is the result of a slight difference in rounding between the Biological Opinion and the method presented here. This increase in estimated take is a conservative change. Based on the estimated proportion of humpback whales in Southeast Alaska that belong to the ESA-listed Mexico DPS, 6.1 percent (Wade *et al.,* 2016), there would be an estimated 1 take by Level B harassment of Mexico DPS humpback whales. This estimate concurs with the assessment presented in the Biological Opinion (Table 13).

Take by Level A harassment is not expected for humpback whales in Phase 2, because of the expected effectiveness of the proposed monitoring and mitigation measures and detecting and avoiding take by Level A harassment via shutdowns of pile installation equipment.

Minke Whales

Minke whales may be present in Tongass Narrows year-round. Their abundance throughout Southeast Alaska is very low, and anecdotal reports have not included minke whales near the project area. However, minke whales are distributed throughout a wide variety of habitats and could occur near the project area. Minke whales are generally sighted as individuals (Dahlheim *et al.* 2009). Based on Freitag (2017 as cited in 83 FR 37473) it is estimated that three individual minke whales may occur near or within Tongass Narrows every 4 months.

*Take Estimation for Phase 1:* Based on the estimated occurrence rate of three individuals every four months, we predict that 9 minke whales (*i.e.,* 3 individuals over a 4 month time period and 12 months of work = 9 individuals in 12 months) may be present in the Level B harassment zone during the 12 month duration of Phase 1, resulting in 9 takes of minke whales by Level B harassment (Table 12).

Take by Level A harassment is not expected for minke whales in Phase 1, because of the expected effectiveness of the proposed monitoring and mitigation measures at detecting and avoiding take by Level A harassment via shutdowns of pile installation equipment. Additionally, minke whales are expected to be rare in the project area so they will likely not occur in the Level A harassment zone.

*Take Estimation for Phase 2:* Based on the estimated occurrence rate of three individuals every 4 months, we conservatively predict that 3 minke whales may be present in the Level B harassment zone during the 3 month

duration of Phase 2, resulting in 3 takes of minke whales by Level B harassment (Table 13).

Take by Level A harassment is not expected for minke whales in Phase 2, because of the expected effectiveness of the proposed monitoring and mitigation measures and detecting and avoiding take by Level A harassment via shutdowns of pile installation equipment. Additionally, minke whales are expected to be rare in the project area so they will likely not occur in the Level A harassment zone.

TABLE 12—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE FOR PHASE 1

| Species | DPS/stock | Estimated number of exposures to Level B harassment | Estimated number of exposures to Level A harassment | Total estimated exposures (Level A and Level B) | Stock abundance | Instances of take as percentage of population |
|---|---|---|---|---|---|---|
| Steller sea lion | Eastern DPS | 2,160 | 0 | 2,160 | 41,638 | 5.2 |
| Harbor seal | Clarence Strait | 846 | 18 | 864 | 31,634 | 2.7 |
| Harbor porpoise | Southeast Alaska | 105 | 15 | 120 | 11,146 | 1.1 |
| Dall's porpoise | Alaska | 165 | 15 | 180 | 83,400 | 0.2 |
| Pacific white-sided dolphin | North Pacific | 50 | 0 | 50 | 26,880 | 0.2 |
| Killer whale | West Coast transient | 180 | 0 | 180 | 2,347 | [a] 7.7 |
| | Alaska resident | | | | 261 | [a] 69.0 |
| | Northern Resident | | | | 243 | [a] 74.1 |
| Humpback whale | Hawaii DPS | 77 | 0 | 77 | 11,398 | [b] 0.7 |
| | Mexico DPS | 5 | 0 | 5 | 3,264 | [b] 0.2 |
| Minke whale | Alaska | 9 | 0 | 9 | Unknown | N/A |

**Note:** DPS = distinct population segment.
[a] These percentages assume all takes come from the same killer whale stock, thus the percentage should be adjusted down if multiple stocks are actually affected.
[b] Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade *et al.* 2016).

TABLE 13—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE FOR PHASE 2

| Species | DPS/stock | Estimated number of exposures to Level B harassment | Estimated number of exposures to Level A harassment | Total estimated exposures (Level A and Level B) | Stock abundance | Instances of take as percentage of population |
|---|---|---|---|---|---|---|
| Steller sea lion | Eastern DPS | 450 | 0 | 450 | 41,638 | 1.1 |
| Harbor seal | Clarence Strait | 162 | 9 | 171 | 31,634 | 0.5 |
| Harbor porpoise | Southeast Alaska | 30 | 10 | 40 | 11,146 | 0.4 |
| Dall's porpoise | Alaska | 45 | 15 | 60 | 83,400 | <0.1 |
| Pacific white-sided dolphin | North Pacific | 50 | 0 | 50 | 26,880 | 0.2 |
| Killer whale | West Coast transient | | | | 2,347 | [a] 4.1 |
| | Alaska resident | 96 | 0 | 96 | 261 | [a] 36.8 |
| | Northern Resident | | | | 243 | [a] 39.5 |
| Humpback whale | Hawaii DPS | 16 | 0 | 16 | 11,398 | [b] 0.1 |
| | Mexico DPS | 1 | 0 | 1 | 3,264 | [b] <0.1 |
| Minke whale | Alaska | 6 | 0 | 6 | Unknown | N/A |

**Note:** DPS = distinct population segment.
[a] These percentages assume all takes come from the same killer whale stock, thus the percentage should be adjusted down if multiple stocks are actually impacted.
[b] Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade *et al.* 2016).

## Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully 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.

In addition to the measures described later in this section, ADOT&PF must employ the following standard mitigation measures:

• Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

• For in-water heavy machinery work other than pile driving/removal and drilling (*e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, 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 the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);

• Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;

• For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal and drilling will shut down immediately when the animals are sighted;

• If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

The following mitigation measures would apply to ADOT&PF's in-water construction activities:

*Establishment of Shutdown Zone for Level A Harassment*—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type, marine mammal hearing group, and in the case of impact pile driving, additional details about the activity including the expected number of pile strikes required, size of the pile, and number of piles to be driving during that day (See Table 10). Here, shutdown zones are larger than the calculated Level A harassment isopleth shown in Table 11. The largest shutdown zones are generally for low frequency and high frequency cetaceans as shown in Table 14. The placement of Protected Species Observers (PSOs) during all pile driving, pile removal and drilling activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure that the entire shutdown zone is visible during pile installation.

TABLE 14—PROPOSED SHUTDOWN ZONES

| Activity | Pile size (inches) | Minutes per pile or strikes per pile | Piles installed or removed per day | Level B harassment isopleth (m) | Shutdown distances (m) | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | LF | MF | HF | PW | OW |
| Vibratory Installation | 30 | 30 min | 3 | 6,310 | 50 | | | | |
| | 24, 18 | 30 min | 3 | 5,420 | | | | | |
| | 27.6 sheet pile, 30.3 sheet pile. | 15 min | 10 | 4,650 | | | | | |
| Vibratory Removal | 24, 16 | 30 min | 5 | 5,420 | | | | | |
| Drilling Rock Sockets | 30 | 180 min | 3 | 12,030 | 70 | 50 | 60 | 50 | |
| | 24, 18 | 120 min | 3 | | 60 | 50 | | | |
| Impact Installation | 30 | 50 strikes | 3 | 2,160 | 250 | 50 | 250 | 150 | 50 |
| | | | 2 | | 200 | | 200 | 100 | |
| | | | 1 | | 100 | | 150 | 100 | |
| | | 200 strikes | 3 | | 550 | | 650 | 300 | |
| | | | 2 | | 400 | | 500 | 250 | |
| | | | 1 | | 300 | | 300 | 150 | |
| | 24 | 50 strikes | 3 | 1,000 | 150 | | 150 | 100 | |
| | | | 2 | | 100 | | 150 | 50 | |
| | | | 1 | | 100 | | 100 | 50 | |
| | | 200 strikes | 3 | | 300 | | 350 | 200 | |
| | | | 2 | | 250 | | 300 | 150 | |
| | | | 1 | | 150 | | 200 | 100 | |
| | 18 | 50 strikes | 3 | | 150 | | 150 | 100 | |
| | | | 2 | | 100 | | 150 | 50 | |
| | | | 1 | | 100 | | 100 | 50 | |

*Establishment of Monitoring Zones for Level B Harassment*—ADOT&PF will establish monitoring zones, based on the Level B harassment zones which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving, removal and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The isopleths for the Level B harassment zones are depicted in Table 9. As shown, the largest Level B harassment zone for both Phase 1 and Phase 2 extends to a radius of 12,023 meters in at least one direction up or down Tongass Narrows (Figure 6–3 and 6–7 in IHA Application), making it impracticable for the PSOs to consistently view the entire harassment area. Due to this, takes by Level B harassment will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

In order to observe as much of the monitoring zone as possible, one PSO will be centrally located near the worksite where pile installation/removal is occurring that day, and

primarily tasked with observing the shutdown zones. Other PSOs will begin at the central worksite and travel along the Tongass Narrows until they have reached the edges of the monitoring zone, based on the Level B harassment zone. These PSOs will then monitor the edges of the monitoring zone and as much as possible of the rest of the monitoring zone, allowing awareness of animals entering the Level B harassment zone. If waters exceed a sea state that restricts the MMO's ability to make observations within the Level A harassment zones (*e.g.,* excessive wind or fog), pile installation and removal must cease. Pile driving must not be re-initiated until the entire relevant Level A harassment zones are visible.

*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 hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving and removal activities. If a marine mammal is present within the Level A harassment zone, soft start will be delayed until the animal leaves the Level A harassment zone. Soft start will begin only after the MMO has determined, through sighting, that the animal has moved outside the Level A harassment zone. If a marine mammal is present in the Level B harassment zone, soft start may begin and a Level B take will be recorded. Soft start up may occur when these species are in the Level B harassment zone, whether they enter the Level B zone from the Level A zone or from outside the Project area.

*Pre-Activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the observer will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will 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 Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, piling activities may begin and take by Level B will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

Based on our evaluation of the applicant's proposed measures NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed project 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 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 or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

There will be at least two PSOs monitoring at all specified times. PSOs will not perform duties for more than 12 hours in a 24-hour period. PSOs would be land-based observers, positioned at the best practical vantage points. Suitable observation points are available from the Tongass Highway (Revillia Island) and Gravina Airport Access Road (Gravina Island). The positions may vary based on construction activity and location of piles or equipment. One PSO, generally the lead, will be stationed centrally near the work site. This individual will be able to monitor all Level A harassment zones under normal circumstances. Depending on the activity (vibratory driving/removal, drilling, or impact driving), additional PSOs will be stationed along the road system, as described above in ''Proposed Mitigation.'' With this configuration, PSOs can have a full view of the Level A harassment zone and awareness of as much of the Level B harassment zone as possible. This monitoring will provide information on marine mammal occurrence within Tongass Narrows and how these marine mammals are impacted by pile installation and removal.

As part of monitoring, PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a

handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum 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.
- Independent observers (*i.e.,* not construction personnel).
- Observers must have their CVs/resumes submitted to and approved by NMFS
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute education or training for experience.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- At least one observer must have prior experience working as an observer.
- 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 and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior.
- 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.

*Preliminary Reporting*

NMFS is proposing to issue two distinct and consecutive IHAs within this action. In recognition of the value of marine mammal monitoring in understanding the impacts of ADOT&PF's activity, NMFS is requiring that ADOT&PF submit a preliminary marine mammal monitoring report for Phase 1 of the project (2020 through 2021) at least 4 months prior to the effective date of the second IHA and initiation of Phase 2. This preliminary report must contain all items that would be included in the draft final report, listed below under ''Reporting''. This will allow NMFS to assess the impact of the proposed action relative to the analysis presented here, and modify the IHA for Phase 2 if the preliminary monitoring report shows unforeseen impacts on marine mammals in the area. If needed, NMFS will publish a **Federal Register** Notice for a proposed amended IHA, describing any changes but referencing the original IHA for Phase 2, and include an opportunity for the public to comment on the amended authorization.

*Reporting*

Separate draft marine mammal monitoring reports must be submitted to NMFS within 90 days after the completion of both Phase 1 and Phase 2 pile driving, pile removal, and drilling activities. These reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations;
- An estimate of total take based on proportion of the monitoring zone that was observed; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHAs (if issued), such as an injury, serious injury or mortality, ADOT&PF would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ADOT&PF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ADOT&PF would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ADOT&PF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), ADOT&PF would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with ADOT&PF to determine whether modifications in the activities are appropriate.

In the event that ADOT&PF discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in these IHAs (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF would report the incident to the Chief of the Permits and

Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. ADOT&PF would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

**Negligible Impact Analyses and Determinations**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Tables 12 and 13, given that NMFS expects the anticipated effects of the proposed pile driving/removal and drilling to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis. Additionally, the proposed activity for both Phase 1 and Phase 2 is similar in nature, so the impacts are expected to be similar and are analyzed as such, unless otherwise noted.

NMFS does not anticipate that serious injury or mortality would occur as a result of ADOT&PF's proposed activity. As stated in the proposed mitigation section, shutdown zones that equal or exceed Level A harassment isopleths shown in Table 11 will be implemented. Take by Level A harassment is proposed for authorization for some species (harbor seals, harbor porpoises, and Dall's porpoises) to account for the slight possibility that these species escape observation by the PSOs within the Level A harassment zone. Further, any take by Level A harassment is expected to arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness.

Behavioral responses of marine mammals to pile driving, pile removal, and drilling at the proposed sites in Tongass Narrows are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (ABR 2016) See ''*Acoustic Impacts*'' above) or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving, removal, and drilling would occur for only a portion of the project's two years on nonconsecutive days (144 days in Phase 1, or 27 days in Phase 2), any harassment during both phases would be temporary. Additionally, many of the species present in Tongass Narrows would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

In addition, for all species except humpbacks, there are no known Biologically Important Areas (BIAs) near the project zone that would be impacted by ADOT&PF's proposed activities. For humpback whales, the whole of Southeast Alaska is a seasonally important BIA from spring through late fall (Ferguson *et al.,* 2015), however, Tongass Narrows is not an important portion of this habitat due to development and human presence. Additionally, Tongass Narrows is a small passageway and represents a very small portion of the total available habitat. There is no ESA-designated critical habitat for humpback whales.

More generally, there are no known calving or rookery grounds within the project area, but anecdotal evidence from local experts shows that marine mammals are more prevalent in Tongass Narrows during spring and summer associated with feeding on aggregations of fish, meaning the area may play a role in foraging. Because ADOT&PF's activities, especially in Phase 1, could occur at any time of year, takes may occur at any time of the year, including these times of feeding. However, the project area represents a small portion of available foraging habitat and the actual duration of noise-producing activities each day is short, meaning impacts on marine mammal feeding for all species, including humpback whale, should be minimal.

Any impacts on marine mammal prey that would occur during ADOT&PF's proposed activity would have at most short-terms effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial, and these insubstantial effects would therefore be unlikely to cause substantial effects on marine mammals at the individual or population level.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity, for both Phase 1 and Phase 2, are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized.
- ADOT&PF would implement mitigation measures including soft-starts for impact pile driving and shutdown zones that exceed Level A harassment zones for most authorized species, which will help to ensure that take by Level A harassment is at most a small degree of PTS.
- The only known BIA is across a broad area of southeast Alaska for humpback whales, and the project area is a very small portion of that BIA. No

other known areas of particular biological importance to any of the affected stocks are impacted by the activity.

• The project area represents a very small portion of the available foraging area for all marine mammal species and anticipated habitat impacts are minor.

*Phase 1*—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from ADOT&PF's proposed Phase 1 activities will have a negligible impact on all affected marine mammal species or stocks.

*Phase 2*—Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from ADOT&PF's proposed Phase 2 activities 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 Sections 101(a)(5)(A) and (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 that may be 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.

Table 12 and 13, in the *Marine Mammal Occurrence and Take Calculation and Estimation* section, present the number of animals that could be exposed to received noise levels that may result in take by Level A harassment or Level B harassment for both Phase 1 and Phase 2 of ADOT&PF's proposed activities. Our analysis of ADOT&PF's planned Phase 1 activity shows that for all but the two stocks of killer whale mentioned above, approximately 8 percent or less of the best population estimates of each affected stock could be taken. Similar analysis of Phase 2 showed similar results, with all but the two mentioned killer whale stocks, expected to have less than 5 percent or less of their stock experience take.

There are two stocks, Northern Resident killer whales and West Coast Transient killer whales, for which the estimated instances of take, in both Phase 1 and Phase 2 of the ADOT&PF's planned project, appear high when compared to the stock abundance (Table 12 and 13). However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. Initial analysis of the West Coast Transient stock shows that in Phase 1, when instances of take (not individuals taken) are compared to the stock abundance, 74.1 percent of the stock is expected to experience take, and in Phase 2, approximately 39.5 percent of the stock is expected to experience take. For the Northern Resident stock, the initial analysis shows that when instances of take (not individuals taken) are compared to the stock abundance, approximately 69 percent of the stock is expected to experience take in Phase 1, and 36.8 of the stock is expected to experience take in Phase 2. While these numbers appear high, the extensive ranges of both stocks compared to ADOT&PF's project area mean that realistically there will be multiple takes of a smaller number of individuals from these stocks, resulting in no more than a third of the individuals of any of these stocks being taken. The Northern Resident stock's range stretches from Washington State into southeast Alaska and the stock is frequently observed along British Columbia, Canada (Muto *et al.,* 2018). The West Coast transient stock occurs in California, Oregon, Washington, British Columbia, and southeastern Alaska. In both cases, ADOT&PF is only impacting a small portion of the total range, and this impact is intermittent. Further, the above percentages are based on analyzing the entire estimated take of killer whales as if it would occur to each stock.

Realistically, the take will be spread in some way among the stocks expected to be in the area (*i.e.,* 100 percent of the take cannot occur to each of the three stocks), further reducing the percentage of takes anticipated to come from any single stock. As a result, it is likely that fewer than one third of both the Northern Resident and West Coast Transient killer whale stocks would be taken in each phase of the project.

For both Phase 1 and Phase 2, there was one stock, minke whale, where the lack of an accepted stock abundance value prevented us from calculating an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales for a portion of the Gulf of Alaska (Zerbini *et al.,* 2006). Given the proposed 9 authorized takes by Level B harassment for the stock in Phase 1, comparison to the best estimate of stock abundance shows less than 1 percent of the stock is expected to be impacted. A similar analysis of the Phase 2, with 6 takes of minke whale by Level B harassment proposed for authorization, comparison to the best estimate of stock abundance show less then 1 percent of the stock is expected to be impacted. Additionally, the range of the Alaska stock of minke whales is extensive, stretching from the Canadian Pacific coast to the Chukchi Sea, and ADOT&PF's project area impacts a small portion of this range. Therefore, the numbers of minke whales authorized to be taken would be considered small relative to estimated survey abundance even if each estimated taking occurred to a new individual.

*Phase 1*—Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals for Phase 1 of ADOT&PF's activity, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Phase 1 of the project.

*Phase 2*—Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals for Phase 2 of ADOT&PF's activity, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Phase 2 of the project.

**Unmitigable Adverse Impact Analysis and Determination**

In order to issue an IHA, 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: (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.

Harbor seals are the marine mammal species most regularly harvested for subsistence by households in Ketchikan and Saxman (A community a few miles south of Ketchikan, on the Tongass Narrows). Eighty harbor seals were harvested by Ketchikan residents in 2007, which ranked fourth among all communities in Alaska that year for harvest of harbor seals. Thirteen harbor seals were harvested by Saxman residents in 2007. In 2008, two Steller sea lions were harvested by Ketchikan-based subsistence hunters, but this is the only record of sea lion harvest by residents of either Ketchikan or Saxman. In 2012, the community of Ketchikan had an estimated subsistence take of 22 harbor seals and 0 Steller sea lion (Wolf *et al.,* 2013). This is the most recent data available. Hunting usually occurs in October and November (ADF&G 2009), but there are also records of relatively high harvest in May (Wolfe *et al.,* 2013). The ADF&G has not recorded harvest of cetaceans from either community (ADF&G 2018). All project activities will take place within the industrial area of Tongass Narrows immediately adjacent to Ketchikan where subsistence activities do not generally occur. The project will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away, where these construction activities are expected to take place. Some minor, short-term harassment of the harbor seals could occur, but this is not likely to have any measureable effect on subsistence harvest activities in the region.

*Phase 1*—Based on the description and location of the specified activity, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Phase 1 of ADOT&PF's proposed activities.

*Phase 2*—Based on the description and location of the specified activity, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Phase 2 of ADOT&PF's proposed activities.

## 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 Office of Protected Resources consults internally, in this case with NMFS Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of the Central North Pacific stock of humpback whales, of which a portion belong to the Mexico DPS humpback whales, which are listed under the ESA. During the USACE permitting process for the Tongass Narrows Project, the effects of this proposed Federal action were analyzed in NMFS' 2019 Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion for Construction of the Tongass Narrows Project (Gravina Access), however, this biological opinion did not analyze the issuance of IHAs. Therefore, the NMFS Permit and Conservation Division has requested initiation of Section 7 consultation with the NMFS Alaska Regional Office for the issuance of these IHAs. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorizations.

## Proposed Authorizations

As a result of these preliminary determinations, NMFS proposes to issue two distinct and consecutive IHAs to ADOT&PF for conducting ferry berth improvements and construction in Tongass Narrows, Alaska in 2020 through 2021 (Phase 1) and 2021 through 2022 (Phase 2), provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

## Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed in-water construction project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 11, 2019.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–15115 Filed 7–16–19; 8:45 am]

BILLING CODE 3510–22–P

---

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Submission for OMB Review; Comment Request

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

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Evaluations of Coastal Zone Management Act Programs: State Coastal Management Programs and National Estuarine Research Reserves.

*OMB Control Number:* 0648–0661.

*Form Number(s):* None.

*Type of Request:* Regular (revision and extension of a current information collection).

*Number of Respondents:* 209.

*Average Hours per Response:* Program manager information collection, 71 hours; stakeholder and partner survey, 15 minutes.

*Burden Hours:* 831.

*Needs and Uses:* The Coastal Zone Management Act of 1972, as amended (CZMA; 16 U.S.C. 1451 *et seq.*) requires that state coastal management programs and national estuarine research reserves developed pursuant to the CZMA and approved by the Secretary of Commerce be evaluated periodically. This request is for collection of information to accomplish those evaluations.

NOAA's Office for Coastal Management (OCM) conducts periodic evaluations of the 34 coastal management programs and 29 research reserves and produces written findings for each evaluation. OCM has access to documents submitted in cooperative agreement applications, performance reports, and certain documentation required by the CZMA and implementing regulations. However, additional information from each coastal management program and research reserve, as well as information from the program and reserve partners and stakeholders with whom each works, is necessary to evaluate against statutory and regulatory requirements. Different information collection subsets are necessary for (1) coastal management programs (2) their partners and stakeholders, (3) research reserves, and (4) their partners and stakeholders.

*Affected Public:* Business or other for-profit organizations; not-for-profit institutions; state, local, or tribal government; federal government.

*Frequency:* Every 5 or 6 years.

*Respondent's Obligation:* Program managers, Required to obtain or retain benefits; Program partners and stakeholders, Voluntary.

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

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

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–15165 Filed 7–16–19; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Proposed Information Collection; Comment Request; Southeast Region Logbook Family of Forms

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 16, 2019.

**ADDRESSES:** Direct all written comments to Adrienne Thomas, Government Information Specialist, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. David Gloeckner, (305) 361–4257 or *david.gloeckner@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This request is for extension of a current information collection.

Participants in most federally-managed fisheries in the NMFS Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of these vessels also provides information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the vessel's fishing gear. A subset of these vessels also provides information about dockside prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed regulations.

### II. Method of Collection

The information is submitted on paper forms and electronic transmissions. Logbooks are completed daily and submitted on either a by-trip, weekly, or monthly basis, depending on the fishery. Fixed costs are submitted on an annual basis. Other information is submitted on a trip basis.

### III. Data

*OMB Control Number:* 0648–0016.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 5,603.

*Estimated Time per Response:* Annual fixed-cost reports, 45 minutes; Colombian fishery logbooks, 18 minutes; discard logbooks, 15 minutes; headboat, charter vessels, golden crab, reef fish-mackerel, economic cost per trip, wreckfish, and shrimp logbooks, 10 minutes; no-fishing responses for golden crab, reef fish-mackerel, charter vessels, wreckfish and Colombian fisheries, 2 minutes.

*Estimated Total Annual Burden Hours:* 42,264.

*Estimated Total Annual Cost to Public:* $0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–15180 Filed 7–16–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0649–XH098**

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will convene on Monday, August 12 through Thursday, August 15, 2019. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meeting will take place at Hyatt Centric New Orleans, located at 800 Iberville Street, New Orleans, LA 70112; telephone: (504) 586–0800.

*Council address:* Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:**

### Agenda

*Monday, August 12, 2019; 8:30 a.m.–5 p.m.*

The committee sessions will begin with the Administrative/Budget Committee reviewing the 2017–18 Audit Report; review and approve the final 2019 Funded Budget; review of 2015–19 Expenditures and Budget Carryover to 2020; and, discuss guidance from National Marine Fisheries Services (NMFS) on the Multi-Year 2020–24 Council Budget Requests and Gulf Council Projection. Sustainable Fisheries Committee will review draft Framework Action to Modify Federal For-Hire Trip Limits; draft Amendment Reef Fish 48/Red Drum 5: Status Determination Criteria and Optimum Yield for Reef Fish and Red Drum and SSC recommendations; discuss Council Research and Monitoring Priorities for 2020–24; review NMFS Southeast Regional Strategic Plan; receive a presentation on Endangered Species Act listing of Bryde's Whale; and, hold a discussion on allocation issues.

The Reef Fish Committee will convene late afternoon to review the Reef Fish and Coastal Migratory Pelagics Landings; a Hot Sheet on African Pompano; and, receive a SSC Summary Report.

*Tuesday, August 13, 2019; 8:30 a.m.–5:30 p.m.*

The Reef Fish Committee will reconvene to review Draft Amendment 36B: Modifications to Commercial Individual Fishing Quota (IFQ) Programs—Quota Bank Presentation; discussion on taking final action on Framework Action to Modify the Recreational For-Hire Red Snapper Annual Catch Target Buffer and Amendment 51: Establish Gray Snapper Status Determination Criteria, Reference Points, and Modify Annual Catch Limits. The committee will also review a draft Framework Action to Modify Greater Amberjack Recreational Management Measures; receive a presentation on Decision Points for Implementing Full-retention Bottom Longline Reef Fish Fishery: Viability, Monitoring, and Costs; and review Reef Fish Amendment 52: Evaluate Red Snapper Allocations.

*Wednesday, August 14, 2019; 8:30 a.m.–5:30 p.m.*

The Habitat Protection and Restoration Committee will review the Permitting Process for Siting of Artificial Reefs and Aquaculture Operations in Federal Waters; and the Essential Fish Habitat (EFH) Outline. The Data Collection Committee will receive a presentation on 101 Permitting Process and Updates to the Programs; hold a discussion on the Commercial Fishing Unique Trip Identifiers Commercial Individual Fishing Quota (IFQ) Program; receive a presentation on Net Gains Alliance and update on Southeast For-Hire Reporting (SEFHIER).

Full Council will convene late morning with Call to Order, Announcements, and Introductions. The Council will hold an Induction for newly appointed Council Members; Adoption of Agenda, and Approval of Minutes. The Council will review Exempted Fishing Permit (EFP) Applications and application public comments (if any); and, receive a presentation on Louisiana Law Enforcement Efforts and Illegal, Unreported and Unregulated (IUU) Fishing Report to Congress.

After lunch, the Council will hold public comment testimony beginning at 2 p.m. until 5:30 p.m. for the following: Final Action: Draft Framework Action to Modify the Recreational For-Hire Red Snapper Annual Catch Target Buffer; and Final Action: Amendment 51 to Establish Gray Snapper Status Determination Criteria, Reference Points, and Modify Annual Catch Limits (ACL); and, open testimony on any other fishery issues or concerns. Anyone wishing to speak during public comment testimony should sign in at the registration station located at the entrance of the meeting room.

*Thursday, August 15, 2019; 8:30 a.m.–3:10 p.m.*

The Council will receive reports from the following management committees: Habitat Protection and Restoration, Administrative/Budget, Sustainable Fisheries, Data Collection and Reef Fish. The Council will vote on Exempted Fishing Permit (EFP) applications, if any; and receive updates from the following supporting agencies: South Atlantic Fishery Management Council; NOAA Office of Law Enforcement (OLE), Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; Department of State; and, discuss any Other Business items.

The Council will hold an election for Chair and Vice-Chair seats for 2019/20.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management

Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: July 12, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–15175 Filed 7–16–19; 8:45 am]

**BILLING CODE 3510–22–P**

---

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Proposed Information Collection; Comment Request; A Coastal Management Needs Assessment and Market Analysis for Financing Resilience

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before September 16, 2019.

**ADDRESSES:** Direct all written comments to Adrienne Thomas, Government Information Specialist, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Kim Penn, NOAA Office for Coastal Management, 1325 East-West Hwy., Silver Spring, MD 20910, (240) 533–0727, and *kim.penn@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This request is for a new information collection.

NOAA's Office for Coastal Management (OCM) and its regional, state, federal, and non-profit partners have worked closely with coastal managers across the country to develop hazard mitigation and resilience plans. These have ranged from short-term responses to immediate threats to long-term adaptation strategies in response to gradual changes. While there are studies on the costs and benefits of hazard mitigation and adaptation options and various tools to help inform government investments, there is no comprehensive inventory or guide to selecting from applicable funding sources or identifying appropriate financing strategies. The range of funding and financing options, from grants and low-interest loans to more innovative private-public partnerships and emerging bonds, presents an ever-changing and complex array of choices. This diversity of funding and financing mechanisms, however, provides an opportunity for decision-makers to leverage resources to support and advance community resilience.

In many coastal communities, investment in resilience measures remains either non-existent or reactive in response to a catastrophic event. While there are no data on the number of adaptation plans that have been implemented, lack of funding is a frequently cited barrier to implementation. Understanding funding and financing options at the time resilience planning is undertaken, and then incorporating financial strategies into the recommendations, will help ensure that resources are invested wisely, and implementation occurs.

This request is for a set of related interviews to support a broader needs assessment to define the types of funding, financing mechanisms, and associated resources that OCM's state and local coastal manager customers need for coastal resilience activities and a market analysis of existing funding and financing programs and mechanisms. The interviews will collect relevant information from interviewees on their experiences with coastal resilience funding and financing mechanisms, challenges and opportunities related to funding and financing coastal resilience, and technical support needs and opportunities that OCM can address.

The information provided by interviewees will be synthesized into the needs assessment, which will address needs and information gaps partitioned by region, financial scale, time scale, and scope/sector. The information provided by interviewees will also be used to inform an inventory of existing entities providing resources for resilience funding, as well as a summary of existing and emerging funding sources and financial tools and mechanisms for coastal resilience. Finally, the interviews will inform recommendations on OCM's potential niche in addressing the identified needs and gaps.

### II. Method of Collection

Information will be collected during structured telephone interviews.

### III. Data

*OMB Control Number:* 0648–XXXX.

*Form Number(s):* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

*Estimated Number of Respondents:* 36.

*Estimated Time per Response:* 1.25 hours.

*Estimated Total Annual Burden Hours:* 45.

*Estimated Total Annual Cost to Public:* $0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–15216 Filed 7–16–19; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Establishment of Department of Defense Federal Advisory Committee

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Establishment of non-discretionary Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is establishing the Table Rock Lake Oversight Committee (''the TRLOC'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The TRLOC's charter is being established pursuant to section 1185(c) of the Water Infrastructure Improvements for the Nation Act (''the 2016 WIIN Act'') (Pub. L. 114–322), and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 CFR 102–3.50(a).

The TRLOC provides independent advice and recommendations to the Secretary of Defense, through the Secretary of the Army, regarding all permits to be issued under the existing Table Rock Lake Master Plan at the recommendation of the District Engineer, Little Rock District, U.S. Army Corps of Engineers, and advise the District Engineer on revisions to the Table Rock Lake Master Plan and Table Rock Shoreline Management Plan, in accordance with section 1185(c)(2) of the 2016 WIIN Act.

Members of the TRLOC who are not full-time or permanent part-time Federal officers, employees, or members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Members who are full-time or permanent part-time Federal officers, employees, or members of the Armed Forces shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employees.

Individual members will be appointed according to DoD policy and procedures, and members will serve a two-year term of service with annual renewal. All members of the TRLOC are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

One member, according to DoD policy and procedures, will be appointed as Chair of the TRLOC. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the TRLOC or serve on more than two DoD federal advisory committees at the same time. Except for reimbursement of official TRLOC-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the TRLOC membership about the TRLOC's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the TRLOC. All written statements should be submitted to the Designated Federal Officer (''DFO'') for the TRLOC, and this individual will ensure that the written statements are provided to the membership for their consideration. The charter and contact information for the TRLOC's DFO can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Dated: July 11, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–15129 Filed 7–16–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

**[Case Number 2019–005; EERE–2019–BT–WAV–0010]**

### Energy Conservation Program: Petition for Waiver of Anker Innovations Limited From the Department of Energy External Power Supply Test Procedure and Grant of Interim Waiver

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of petition for waiver and grant of an interim waiver, and request for comments.

**SUMMARY:** This document announces receipt of and publishes a petition for waiver from Anker Innovations Limited (''Anker''), which seeks a waiver from the U.S. Department of Energy (''DOE'') test procedure used for determining the energy efficiency of a specified EPS basic model. Anker asserts that testing under the current DOE test procedure does not reflect actual use of EPSs that meet the USB Power Delivery Specification and seeks to use an alternate test procedure. DOE is granting to Anker an interim waiver from the DOE test procedure for the specified basic model, subject to use of the alternate test procedure as set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning Anker's petition and its suggested alternate test procedure, as well as the alternate test procedure specified in the interim waiver, to inform its final decision on Anker's waiver request.

**DATES:** Written comments and information are requested and will be accepted on or before August 16, 2019.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2019–005'', and Docket number ''EERE–2019–BT–WAV–0010,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Anker2019WAV0010@ee.doe.gov.* Include Case No. 2019–005 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2019–005, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC, 20024. If possible, please submit all items on a ''CD'', in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

*Docket:* The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at

*http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0010.* The docket web page contains simple instruction on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: 202–586–8145. Email: *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background and Authority

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include EPSs, the focus of this document. (42 U.S.C. 6291(36); 42 U.S.C. 6295(u))

EPCA's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA for covered products include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for EPSs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, subpart B, appendix Z, *Uniform Test Method for Measuring the Energy Consumption of External Power Supplies* (''Appendix Z'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2).

## II. Anker's Petition for Waiver and Petition for Interim Waiver

On April 12, 2019, Anker filed a petition for waiver and a petition for interim waiver from the test procedure applicable to EPSs set forth at Appendix Z.[3] Anker stated that the specified basic model includes adaptive ports that meets the provisions of the International Electrotechnical Commission's ''Universal serial bus interfaces for data and power—Part 1–2: Common components—USB Power Delivery'' (''IEC 62680–1–2:2017'') specification. The IEC 62680–1–2:2017 specification describes the particular architecture, protocols, power supply behavior, connectors, and cabling necessary for managing power delivery over a universal serial bus (''USB'') connection at power levels of up to 100 watts (''W''). The purpose behind this specification is to help provide a standardized approach for power supply and peripheral developers to ensure backward compatibility while retaining product design and marketing flexibility. See generally, IEC 62680–1–2:2017 (Abstract) (describing the standard's general provisions and purpose).

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] The specific basic model for which the petition applies is EPS basic model A2041. This basic model name was provided by Anker in its April 12, 2019 petition, which is available at: *http://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0010.*

Anker states that the adaptive ports on the basic model identified in its petition meet the IEC 62680–1–2:2017 specification. Anker asserts that testing the adaptive ports that meet the IEC 62680–1–2:2017 specification at 15 watts at the lowest nameplate output voltage (*i.e.,* 5 volts, 3 amps) does not reflect actual use in the field, and that, at this voltage level, these ports do not exceed 10 watts for almost all usage. Accordingly, the petitioner argues that the current DOE test procedure results in a measurement that is grossly unrepresentative of the actual energy consumption characteristics of the EPS in the real world.

Under the current DOE test procedure, average active-mode efficiency for an adaptive EPS is measured by testing the units twice—once at the highest achievable output voltage (''V'') and once at the lowest achievable output voltage. The test procedure requires that active-mode efficiency be measured at four loading conditions relative to the nameplate output current of the EPS. See 10 CFR 430.23(bb) and Appendix Z. The lowest achievable output voltage supported by the USB Power Delivery Specification is 5V and the specified nameplate current at this voltage output is 3 amps (''A''), resulting in a power output of 15W. Anker contends that while the IEC 62680–1–2:2017 specification requires the tested EPS to support this power output, the 15W at 5V condition will be rarely used and only for brief periods of time, and that adaptive EPSs operating at 5V do not exceed 10W for almost all usage conditions.

Anker also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(e)(2). Based on the assertions in the petition, absent an interim waiver, the DOE test procedure would test the basic model of adaptive EPS listed in the petition in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. DOE notes that it has granted waivers in response to petitions that presented the same issue as in Anker's petition.[4] Consequently, it appears likely that Anker's petition for waiver will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Anker immediate relief pending a determination of the petition for waiver.

## III. Alternate Test Procedure

As part of its waiver request, Anker seeks to use an alternate test procedure to test and rate a specific EPS basic model that features two USB–A non-adaptive ports, and two USB–C adaptive ports. In its suggested alternate test procedure, Anker recommends testing the EPS by loading both USB–A output ports at a combined power draw of 10 watts (''W'') (*i.e.,* 5 volts, 1 amp per USB–A port) for the 100% loading condition, and both USB–C output ports at a combined power draw of 90W (*i.e.,* 20 volts, 2.25 amps per USB–C port) for the 100% loading condition. The 75%, 50%, and 25% loading conditions would then be scaled accordingly (*i.e.,* 0.75 amps, 0.5 amps, 0.25 amps for each USB–A port at 5 volts, respectively; and 1.688 amps, 1.125 amps, 0.563 amps for each USB–C output port at 20 volts, respectively). Based on DOE's reading of Anker's suggested alternate test procedure, this approach would effectively require a given EPS to be tested only at the highest nameplate output voltage.

DOE has reviewed Anker's suggested alternate test procedure and initially finds that the suggested test procedure would also evaluate the basic model in a manner unrepresentative of its true energy characteristics. While DOE recognizes that testing a port that meets the IEC 62680–1–2:2017 specification at 5V, 3A is unrepresentative of actual field use, the petitioner's suggested method of testing an adaptive EPS only at the highest nameplate output voltage would also be unrepresentative of the tested device's true energy consumption. Adaptive USB–C ports are able to operate at their stated higher nameplate output voltages only when used in conjunction with consumer products that are able to request the higher voltages from the EPS using established digital communication protocols as outlined in the IEC 62680–1–2:2017 specification. The output of these USB–C ports will revert to the lowest voltage (*i.e.,* 5V) when used with devices that are incapable of such digital communication. In order for a measurement to be representative of real-world usage, the applicable test procedure must include measurements covering both of these use cases. Anker's suggested alternate test procedure would fail to capture this product's real-world energy use, which Anker admits would include the 5V operating condition, albeit not at a current of 3 amps as specified under IEC 62680–12:2017.

In previously granted waivers, the alternative test procedures address issues of representativeness by testing ports that meet the IEC 62680–1–2:2017 specification at 10W (*i.e.,* 5 volts, 2 amps) at the lowest nameplate output voltage for the 100% loading condition, rather than at 15W (*i.e.,* 5 volts, 3 amps) as specified under the IEC testing standard. The 75%, 50%, and 25% loading conditions are then scaled accordingly. All other testing requirements, including testing at the highest nameplate output voltage, apply as prescribed in Appendix Z. This test method captures the efficiencies of such an EPS at both its highest and lowest nameplate output voltages while alleviating the problem of providing a representative measurement caused by testing adaptive ports at 15W at the lowest nameplate output voltage. Testing an adaptive EPS in this manner provides a more representative assessment of its real-world behavior where the device's output voltage depends on the functionality of the connected consumer product. Additionally, prescribing a single test method that applies to all EPSs meeting the IEC 62680–1–2:2017 specification ensures the comparability of test results.

Therefore, in place of the petitioner's suggested test method, DOE is requiring Anker to test the specified adaptive EPS at both the highest and lowest output voltage to better account for the adaptive nature of the EPS. Consistent with previous test procedure waivers for the specified basic model,[5] the adaptive ports that meet the IEC 62680–1–2:2017 specification must be tested at an output power of 10W at the lowest nameplate output voltage, 5 volts, instead of 15W. The loading conditions at 75%, 50%, and 25% must be scaled accordingly (*i.e.,* 7.5W, 5W, 2.5W, respectively). For the highest nameplate output voltage, the specified EPS basic model must be tested according to the current EPS test procedure provisions for multiple-

[4] *See* Notice of Decision and Order Granting Individual Waivers to Apple Inc., Microsoft Corporation, Poin2 Lab and Hefei Bitland Information Technology Co., From the Department of Energy External Power Supplies Test Procedure. 83 FR 11738 (March 16, 2018). *See also,* Notice of Decision and Order Granting Individual Waiver to Huawei Technologies, Co. Ltd. From the Department of Energy External Power Supplies Test Procedure and Grant of Interim Waiver. 83 FR 25448 (June 1, 2018).

[5] See Notice of Decision and Order Granting Individual Waivers to Apple Inc., Microsoft Corporation, Poin2 Lab and Hefei Bitland Information Technology Co., From the Department of Energy External Power Supplies Test Procedure. 83 FR 11738 (March 16, 2018). See also, Notice of Decision and Order Granting Waiver to Huawei Technologies, Co. Ltd. 83 FR 25448 (June 1, 2018).

voltage EPSs as prescribed in section 4(b) of Appendix Z.

## IV. Summary of Grant of an Interim Waiver

DOE has reviewed Anker's petition for an interim waiver, and the alternate test procedure requested by Anker. Upon this review and for the reasons discussed in the prior section, DOE has initially determined that the alternate test procedure as suggested by Anker would not evaluate the basic model in a manner representative of its true energy characteristics. In contrast, the alternate test procedure specified by DOE appears to allow for the accurate measurement of the efficiency of this product, while alleviating the testing problems associated with Anker's implementation of EPS testing for the basic model specified in its petition. Consequently, it appears likely that Anker's petition for a waiver will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Anker immediate relief pending a determination of the petition for waiver.

For the reasons stated, DOE has issued an Order stating:

(1) Anker must test and rate Anker-branded external power supply (''EPS'') basic model A2041 in accordance with the alternate test procedure set forth in paragraph (2).

(2) The alternate test procedure for the Anker basic models referenced in paragraph (1) is the test procedure for EPS prescribed by DOE at 10 CFR part 430, subpart B, Appendix Z, except that under section 4(a)(i)(E) and Table 1 of Appendix Z, when testing at the lowest achievable output voltage, ports that meet the IEC 62680–1–2:2017 specification must be tested such that the 100% nameplate loading condition shall be 2 amps (which corresponds to an output power of 10 watts). The 75%, 50%, and 25% loading conditions shall be scaled accordingly and the nameplate output power of such ports, at the lowest output voltage, shall be equal to 10 watts. All other requirements of Appendix Z and DOE's regulations remain applicable.

(3) *Representations.* Anker may not make representations about the energy efficiency of the basic models referenced in paragraph (1) for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth in paragraph (2) and such representations fairly disclose the results of such testing.

(4) This interim waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This interim waiver is issued to Anker on the condition that the statements and representations provided by Anker are valid. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, Anker may request that DOE rescind or modify the interim waiver if Anker discovers an in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this interim waiver does not release Anker from the certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Anker may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of central air conditioners and heat pumps. Alternatively, if appropriate, Anker may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

## V. Request for Comments

DOE is publishing Anker's petition for waiver in its entirety as originally submitted, pursuant to 10 CFR 430.27(b)(1)(iv). The petition includes a suggested alternate test procedure, as specified in section III of this document, to determine the efficiency of Anker's specified EPS. DOE may consider including this alternate procedure in a subsequent Decision and Order based on comments from interested parties. However, DOE is granting an interim waiver using an alternate test procedure different than that suggested by the petitioner described in section IV of this document. DOE may consider including the alternate procedure specified in the Interim Waiver Order in a subsequent Decision and Order.

DOE invites all interested parties to submit in writing by August 16, 2019, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Eric Pan, Room 1318–19, Hollywood Plaza, 610 Nathan Road, Mongkok, Kowloon, Hongkong.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact

information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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 which 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.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signed in Washington, DC, on July 10, 2019.

**Alexander N. Fitzsimmons,**

*Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

## Petition of Anker Innovations Limited. For Waiver and Application for Interim Waiver Interim Waiver of Test Procedure for External Power Supplies

Anker Innovations Limited (Anker) respectfully submits this Petition for Waiver and Application for Interim Waiverl [sic] as related to the Department of Energy's (DOE) test procedure for external power supplies (EPS) that Part 430, Subpart B, Appendix Z.

Anker is located at Room 1318–19, Hollywood Plaza, 610 Nathan Road, Mongkok, Kowloon, Hongkong [sic]. Telephone number: 0755–86544807.

The EPS basic models listed in Appendix I hereto meet the criteria for a waiver[.]

The current DOE test procedure evaluates the models in a manner that is that is [sic] grossly unrepresentative of their actual energy consumption characteristics in real-world usage. This situation has already been recognized by DOE, and it has indicated a willingness to review the situation. Anker urges that a waiver be granted that will provide for the alternate test procedure . [sic] discussed herein, under which lowest voltage average efficiency would be measured at 10 watts (W). This is far more representative of actual energy consumption characteristics of the product in real-world usage than the 15W required by the current DOE test procedure. DOE ''will grant a waiver from the test procedure requirements'' in these circumstances.

### I. Basic Models for Which a Waiver Is Requested

The basic models for which a waiver is requested are the adaptive EPS set forth in Appendix I hereto. They are manufactured by Anker Innovations are [sic] distributed in commerce under the Anker brand name.

### II. Need for Die [sic] Requested Waiver

Adaptive EPSs are highly beneficial products is [sic] to help provide a standardized approach for power supply and peripheral developers to ensure backward compatibility while retaining product design and marketing flexibility.

Under the current DOE test procedure, average active-mode efficiency for adaptive EPS is to be measured by testing the unit twice—once at the highest achievable output voltage and once at the lowest[.] Testing is to be across four load points (100%, 75%, 50%, and 25%) for each of the highest and lowest voltage levels. The average efficiency is deemed to be the arithmetic mean of the efficiency values calculated at the four load points. 8 [sic] The lowest achievable output voltage supported by the basic models is 5 volts (V). They are designed to provide a maximum power of 15W when this voltage is selected. 15W is an element of the USB Power Delivery Specification (standard IEC 62680–1–2:2017), which requires the product to support 15W at 5V. However, adaptive EPS do not exceed IOW for almost all usage. 15W at 5V will only be used in rare use scenarios and only for brief periods of time. Therefore, the DOE test procedure's evaluation at this power level is unrepresentative of the true energy consumption of the basic models in real-world usage.

### III. Proposed Alternate Test Procedure

Anker proposed alternate test procedure, [ ] consistent with the approved alternate test procedure to evaluate the performance of the performance of the actual usage models. A2041 is a 100W intelligent charger, [ ] it contains four output ports, [sic] 2 USBC ports and 2 USBA ports. So Anker think [sic] that the following combination can better evaluate the performance of the product.

This usage mddels [sic] combination [sic] as follow:

When the USBA loading condition at [the] lowest achievable output voltage is 2A [ ] (The UABA corresponds to output power of 10 Watts). At the same time with the USBC loading condition at the rest of 90 watts is 4.5A at highest output voltage [ ] (20V). The product total output power is 100 watts.

- Measure at 4 points: 100%, 75%, 50%, & 25% of 100W load points at the same time with USBA and USBC loading condition.
- Take the average.
- Compare results against DOE efficiency requirement at 100 watts.

## IV. Request for Interim Waiver

Anker requests an interim waiver for its testing and rating of the models in Appendix I. The petition for waiver is likely to be granted, as evidenced by its merits. Without waiver relief, Anker would be subject to requirements that clearly should not apply to such products. And without such relief, Sales [sic] of EPS will be inhibited, to the detriment of Anker and to users and distributors of adaptive EPS and the products that use EPS.

## Conclusion

DOE should grant Anker the requested waiver and interim waiver for the models listed in Appendix I hereto.

Respectfully submitted,
Compliance Engineer: Eric Pan
/s/

## Appendix I

The waiver and interim waiver requested herein should apply to testing and rating of the following basic models: A2041 provided by Anker Innovations Limited.

## Appendix II

The following are manufacturers of all other basic models distributed in commerce in the United States and known to Anker to incorporate design characteristics similar to those found in the basic models that are the subject of the petition for waiver:

Apple, Inc
Chicony Power Technology
Chrontel, Inc
Dell
HONOR ELECTRONIC CO. LTD
Huntkey
Ever Win International Corp.
Griffin Technology LLC
LG Electronics USA, Inc
Lite on
Lucent Trans Electronics Co., Ltd.
Mobileconn Technology Co., Ltd.
Phihong Technology Co., Ltd.
Poin2 Lab.
Renesas Electronics Corp.
Salcomp Pie
Samsung
STMicroelectronics
Superior Communications
Texas Instruments
Ventev Mobile
Weltrend Semiconductor
Xentris Wireless

[FR Doc. 2019–15204 Filed 7–16–19; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Notice of Orders Issued Under Section 3 of the Natural Gas Act During May 2019

| | FE Docket Nos. |
|---|---|
| PORT ARTHUR LNG, LLC | 15–96–LNG |
| DRIFTWOOD LNG LLC | 16–144–LNG |
| ENVIRO EXPRESS, INC | 19–35–LNG; 17–53–LNG |
| TRANS-PECOS PIPELINE, LLC | 19–50–NG |
| ENCANA MARKETING (USA) INC | 19–47–NG |
| TRAILSTONE ENERGY MARKETING DE MEXICO, S. DE R.L. DE C.V | 19–51–NG |
| TRAILSTONE NA LOGISTICS, LLC | 19–52–NG |
| ECOGAS MEXICO, S. DE R.L. DE C.V | 19–45–NG |
| WORLD FUEL SERVICES, INC | 19–46–NG; |
| IDAHO POWER COMPANY | 19–53–NG |
| CHEVRON U.S.A. INC | 19–54–NG |
| CP ENERGY MARKETING (US) INC | 19–58–NG |
| ELEMENT MARKETS RENEWBLE ENERGY LLC | 19–59–NG |
| OZARK GAS LLC | 19–60–NG |
| PETROCHINA INTERNATIONAL (CANADA)) TRADING LTD | 19–44–NG |
| NEW ENGLAND NG SUPPLY LIMITED | 19–55–NG |
| POTELCO, INC | 19–56–LNG |
| CASCADE NATURAL GAS CORPORATION | 19–57–NG |

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2019, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and vacating prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2019.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on July 11, 2019.

**Amy Sweeney,**

*Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.*

## APPENDIX

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

| | | | | |
|---|---|---|---|---|
| 4372 | 05/02/19 | 15–96–LNG | Port Arthur LNG, LLC | Opinion and Order 4372 granting long-term authority to export LNG to Non-Free Trade Agreement Nations. |
| 4373 | 05/02/19 | 16–144–LNG | Driftwood LNG LLC | Opinion and Order 4373 granting long-term authority to export LNG to Non-Free Trade Agreement Nations. |
| 4380; 4031–A | 05/14/19 | 19–35–LNG; 17–53–LNG. | Enviro Express, Inc | Order 4380 granting blanket authority to import LNG from Canada by truck, and Order 4031–A vacating prior authorization. |
| 4381 | 05/14/19 | 19–50–NG | Trans–Pecos Pipeline, LLC | Order 4381 granting blanket authority to import/export natural gas from/to Mexico. |

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

| | | | | |
|---|---|---|---|---|
| 4382 | 05/14/19 | 19–47–NG | Encana Marketing (USA) Inc | Order 4382 granting blanket authority to import/export natural gas from/to Canada/Mexico. |
| 4383 | 05/14/19 | 19–51–NG | Trailstone Energy Marketing de Mexico, S. de R.L. de C.V. | Order 4383 granting blanket authority to import/export natural gas from/to Mexico. |
| 4384 | 05/14/19 | 19–52–NG | Trailstone NA Logistics, LLC | Order 4384 granting blanket authority to import/export natural gas from/to Canada/Mexico, to import LNG from Canada/Mexico by truck, to export LNG to Canada/Mexico by vessel, and to import LNG from various international sources by vessel. |
| 4385 | 05/14/19 | 19–45–NG | Ecogas Mexico, S. de R.L. de C.V. | Order 4385 granting blanket authority to import natural gas from Canada, and to export natural gas to Mexico. |
| 4386 | 05/29/19 | 19–46–NG | World Fuel Services, Inc | Order 4386 granting blanket authority to import/export natural gas from/to Mexico. |
| 4387 | 05/29/19 | 19–53–NG | Idaho Power Company | Order 4387 granting blanket authority to import natural gas from Canada. |
| 4388 | 05/29/19 | 19–54–NG | Chevron U.S.A. Inc | Order 4388 granting blanket authority to import/export natural gas from/to Canada. |
| 4389 | 05/29/19 | 19–58–NG | CP Energy Marketing (US) Inc. | Order 4389 granting blanket authority to import/export natural gas from/to Canada. |
| 4390 | 05/29/19 | 19–59–NG | Element Markets Renewable Energy LLC. | Order 4390 granting blanket authority to import/export natural gas from/to Canada/Mexico. |
| 4391 | 05/29/19 | 19–60–NG | Ozark Gas LLC | Order 4391 granting blanket authority to export natural gas to Mexico. |
| 4392 | 05/30/19 | 19–44–NG | PetroChina International (Canada) Trading Ltd. | Order 4392 granting blanket authority to import/export natural gas from/to Canada. |
| 4393 | 05/30/19 | 19–55–NG | New England NG Supply Limited. | Order 4393 granting blanket authority to import/export natural gas from/to Canada. |
| 4394 | 05/30/19 | 19–56–LNG | Potelco, Inc | Order 4394 granting blanket authority to import LNG from Canada by truck. |
| 4395 | 05/30/19 | 19–57–NG | Cascade Natural Gas Corporation. | Order 4395 granting blanket authority to import natural gas from Canada. |

[FR Doc. 2019–15167 Filed 7–16–19; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP18–1115–001.
*Applicants:* Saltville Gas Storage Company L.L.C.
*Description:* Report Filing: Saltville RP18–1115 Refund Report.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5057.
*Comments Due:* 5 p.m. ET 7/22/19.

*Docket Numbers:* RP19–1379–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) Rate Filing: Neg Rate 2019–07–11 Freepoint to be effective 7/11/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5126.
*Comments Due:* 5 p.m. ET 7/22/19.

*Docket Numbers:* RP19–1380–000.
*Applicants:* Eastern Shore Natural Gas Company.
*Description:* Compliance filing Negotiated Rate and Non-Conforming—Garrison to be effective 7/12/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5000.
*Comments Due:* 5 p.m. ET 7/23/19.

*Docket Numbers:* RP19–1381–000.
*Applicants:* Northern Natural Gas Company.
*Description:* Petition for Limited Waiver of Tariff Provisions of Northern Natural Gas Company under RP19–1381.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5155.
*Comments Due:* 5 p.m. ET 7/22/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 10, 2019..

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15176 Filed 7–16–19; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IN14–4–000]**

### Vitol Inc., Federico Corteggiano; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on July 10, 2019, in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket.[1] Accordingly, pursuant to 18 CFR 385.2202 (2018), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-

[1] *Vitol Inc. and Federico Corteggiano,* 168 FERC ¶ 61,013 (2019).

decisional staff, pursuant to 18 CFR 385.2201 (2018), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Jeremy Medovoy
Mark Nagle
Jessica Wack
Ambrea Watts
Benjamin Jarrett
Alfred Jasins
Darice Xue
Joel Douglas

Dated: July 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15170 Filed 7–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19–148–000.
*Applicants:* Grazing Yak Solar, LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Grazing Yak Solar, LLC.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5127.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* EG19–149–000.
*Applicants:* Caden Energix Hickory LLC.
*Description:* Self-Certification of EG or FC of Caden Energix Hickory LLC.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5099.
*Comments Due:* 5 p.m. ET 8/1/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER19–1900–001.
*Applicants:* Golden Spread Electric Cooperative, Inc.
*Description:* Compliance filing: ER19–1900 Deficiency Letter Response to be effective 5/20/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5057.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–1902–001.
*Applicants:* Deseret Generation & Transmission Co-operative, Inc.
*Description:* Compliance filing: ER19–1902 Deficiency Letter Response to be effective 5/20/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5019.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–1943–001.
*Applicants:* NorthWestern Corporation.
*Description:* Compliance filing: Response to Deficiency Letter re Order No. 845/845–A Compliance Filing to be effective 5/22/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5072.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2376–000.
*Applicants:* Deseret Generation & Transmission Co-operative, Inc.
*Description:* Compliance filing: OATT Order No. 845 Compliance—Deficiency Response to be effective 5/20/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5015.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2377–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company.
*Description:* § 205(d) Rate Filing: 2019–07–11_SA 3330 Assembly Solar LLC–METC E&P (J796) to be effective 9/10/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5047.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2378–000.
*Applicants:* Sterlington Power LLC.
*Description:* Compliance filing: Notice of Succession, Baseline Re-file, and Request for Admin Cancellation to be effective 5/15/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5049.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2379–000.
*Applicants:* Duke Energy Progress, LLC.
*Description:* § 205(d) Rate Filing: DEP–DEC ASOA (Asheville CC) Concurrence Filing (DEP SA No. 362) to be effective 6/19/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5056.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2380–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2019–07–11_SA 3228 Interstate Power and Light Co-ITC Midwest 1st Rev GIA (J495) to be effective 6/26/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5074.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2381–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to ISA, SA No. 2053, NQ121 (amend) to be effective 6/2/2015.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5078.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2382–000.
*Applicants:* Story County Wind, LLC.
*Description:* Baseline eTariff Filing: Story County Wind, LLC Application for Market-Based Rate Authority to be effective 9/10/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5081.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2383–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-Karankawa Wind I Interconnection Agreement First Amend & Restated to be effective 6/20/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5082.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2384–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-La Chalupa Interconnection Agreement First Amend & Restated to be effective 6/25/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5083.
*Comments Due:* 5 p.m. ET 8/1/19.

*Docket Numbers:* ER19–2385–000.
*Applicants:* AEP Texas Inc.
*Description:* § 205(d) Rate Filing: AEPTX-Karankawa Wind II Interconnection Agreement First Amend & Restated to be effective 6/27/2019.
*Filed Date:* 7/11/19.
*Accession Number:* 20190711–5084.
*Comments Due:* 5 p.m. ET 8/1/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15177 Filed 7–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER19–2373–000]**

### Ashtabula Wind I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ashtabula Wind I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 31, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. 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.

Dated: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15174 Filed 7–16–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Provo River Project—Rate Order No. WAPA–189

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed Provo River Project firm power formula rate.

**SUMMARY:** Western Area Power Administration (WAPA) proposes a 5-year Provo River Project (PRP) Firm Power Formula Rate through March 31, 2025, which is unchanged from the existing formula rate in Rate Schedule PR–1 that expires on March 31, 2020. This is considered a minor rate adjustment since the installed capacity for the project is only 5,000 kilowatts and therefore below the 20,000 kilowatt threshold that would make it a major rate adjustment.

**DATES:** A consultation and comment period will begin July 17, 2019 and end August 16, 2019. WAPA will accept written comments at any time during the consultation and comment period.

**ADDRESSES:** Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rate submitted by WAPA to FERC for approval should be sent to: Steven Johnson, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 299 South Main Street, Suite 200, Salt Lake City, UT 84111, (970) 252–3000, email: *CRSPMC-rate-adj@wapa.gov.* WAPA will post information about the proposed formula rate and the written comments received to its website at: *https://www.wapa.gov/regions/CRSP/rates/Pages/rates.aspx.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Hackett, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, (801) 524–5503, or email: *CRSPMC-rate-adj@wapa.gov.*

**SUPPLEMENTARY INFORMATION:** The Deer Creek Dam, Reservoir, and Power Plant are components of the Deer Creek Division of the PRP, located on the Provo River in Utah. The marketing plan for the PRP was published in the **Federal Register** on November 21, 1994.[1] In accordance with the marketing plan, WAPA markets the output of the PRP to the Utah Associated Municipal Power Systems, Utah Municipal Power Agency, and Heber Light and Power (Customers). WAPA provides electric service to the Customers under contracts that will expire September 30, 2024.[2] WAPA intends to execute new contracts and a new marketing plan to be effective October 1, 2024; however, these will be done in a separate public rate process and are not expected to impact this rate action. The Customers receive all marketable power generation from the PRP and pay the annual revenue requirement in 12 monthly-installment payments based on the estimated operation, maintenance, interest, and replacement costs for the Deer Creek Power Plant. The payments do not depend upon the power and energy made available for sale each year. A reconciliation of estimates to actual expenses is accomplished at the end of the fiscal year, and any differences are included in the following fiscal year's revenue requirement.

On November 2, 2010, the Federal Energy Regulatory Commission (FERC) confirmed, approved, and placed into effect Rate Order No. WAPA–149 for a 5-year period through March 31, 2015. Subsequently, WAPA–165 extended the formula rate for another 5-year period through March 31, 2020.[3] The existing formula rate provides sufficient revenue to recover annual expenses, interest, and capital replacements within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2.

### Legal Authority

The proposed action is a minor rate adjustment, as defined by 10 CFR 903.2(f). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), WAPA has determined it is not necessary to hold public information and public comment forums for this rate action. Nonetheless, WAPA is initiating a 30-day consultation and comment period to give the public an opportunity to comment on the proposed formula rate. WAPA will review and consider all timely public comments at the conclusion of the consultation and comment period and make amendments

[1] 59 FR 60,007.

[2] WAPA Contract Nos. 94–SLC–0254 (Dec. 22, 1994), 94–SLC–0253 (Jan. 19, 1995), and 07–SLC–0601 (Mar. 28, 2007).

[3] FERC approved consecutive 5-year rate extensions of the same formula rate in Docket Nos. EF15–5–000 (133 FERC ¶ 62,112) and EF15–6–000 (151 FERC ¶ 62,223), extending the rate through March 31, 2020.

or adjustments to the proposal as appropriate.

WAPA is establishing the PRP formula rate in accordance with Section 302 of the DOE Organization Act (42 U.S.C. 7152), which transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation, under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the PRP.

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place into effect such rates on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. In Delegation Order No. 00–002.00Q, effective November 1, 2018, the Secretary of Energy also delegated to the Under Secretary of Energy the authority to confirm, approve, and place into effect on an interim basis power and transmission rates for WAPA. By Redelegation Order No. 00–002.10D, effective June 4, 2019, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity.

**Availability of Information**

All brochures, studies, comments, letters, memoranda, or other documents that WAPA initiates or uses to develop the proposed formula rate are available for inspection and copying at the Colorado River Storage Project Management Center located at 299 South Main Street, Suite 200, Salt Lake City, Utah. Many of these documents and supporting information are also available on WAPA's website at: *https://www.wapa.gov/regions/CRSP/rates/Pages/rates.aspx.*

**Ratemaking Procedure Requirements**

*Environmental Compliance*

In compliance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared, or if this action can be categorically excluded from those requirements.

*Determination Under Executive Order 12866*

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: June 26, 2019.

**Mark A. Gabriel,**

*Administrator.*

[FR Doc. 2019–15205 Filed 7–16–19; 8:45 am]

BILLING CODE 6450–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011931–010.

*Agreement Name:* CMA CGM/Marfret Vessel Sharing Agreement for PAD Service.

*Parties:* CMA CGM S.A. and Compagnie Maritime Marfret.

*Filing Party:* Draughn Arbona; CMA CGM (America) LLC.

*Synopsis:* The amendment provides authority for the Parties to make seasonable adjustments to capacity, with the service operating on a weekly scheduled during the peak season and fortnightly during the slack season. The amendment further serves to remove language regarding joint procurement authority, which has not been utilized by the Parties, while clarifying that the Parties are authorized to discuss and agree upon certain practical matters related to terminals and terminal-related services.

*Proposed Effective Date:* 8/19/2019.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/512.*

Dated: July 11, 2019.

**Rachel E. Dickon,**

*Secretary.*

[FR Doc. 2019–15183 Filed 7–16–19; 8:45 am]

BILLING CODE 6731–AA–P

## FEDERAL RETIREMENT THRIFT INVESTMENT

### Board Member Meeting

77 K Street NE, 10th Floor, Washington, DC 20002
July 22, 2019, 8:30 a.m.

**Open Session**

1. Approval of the June 24, 2019 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Performance
   (d) Budget Review
   (e) Audit Status
4. Withdrawal Project Update

**Closed Session**

Information covered under 5 U.S.C. 552b (c)(6), (c)(9)(B), and c(10).

*Contact Person for More Information:* Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: July 12, 2019.

**Megan Grumbine,**

*General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2019–15182 Filed 7–16–19; 8:45 am]

BILLING CODE 6760–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Meeting of the National Advisory Council for Healthcare Research and Quality

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

**DATES:** The meeting will be held on Wednesday, July 24, 2019, from 8:30 a.m. to 3:00 p.m.

**ADDRESSES:** The meeting will be held at AHRQ, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Jaime Zimmerman, Designated

Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Karen Migdail at (301) 427–1855 or *Karen.Migdail@ahrq.hhs.gov.*

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Wednesday, July 10, 2019. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Phelps' phone number is (301) 427–1128.

**SUPPLEMENTARY INFORMATION:**

**I. Purpose**

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

**II. Agenda**

On Wednesday, July 24, 2019, the Council meeting will convene at 8:30 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting is open to the public and will be available via webcast at *www.webconferences.com/ahrq.* The meeting will begin with an update on AHRQ's budget, programs and initiatives. The agenda will also include a discussion of AHRQ's strategic goals related to improving care for people living with multiple chronic conditions, diagnostic error, and data and analytics. The agenda will also allow for further discussion about advancing patient-centered care for people living with multiple chronic conditions. The final agenda will be available on the AHRQ website at *www.AHRQ.gov* no later than Wednesday, July 17, 2019.

Dated: July 11, 2019.

**Virginia L. Mackay-Smith,**

*Associate Director.*

[FR Doc. 2019–15140 Filed 7–16–19; 8:45 am]

**BILLING CODE 4160–90–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 84 FR 10518–10519, dated March 21, 2019) is amended to reflect the reorganization of the National Center for Injury Prevention and Control, Deputy Director for Non-Infectious Diseases, Centers for Disease Control and Prevention. This reorganization will streamline the current organizational structure, improve the overall employee/supervisor ratio, eliminate workflow inefficiencies, and improve customer service.

*I.* Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Division of Unintentional Injury Prevention (CUHD)
- Home, Recreation, and Transportation Branch (CUHDB)
- Health Systems and Trauma Systems Branch (CUHDC)

*II.* Under Part C, Section C–B, Organization and Functions, make the following change:

- Update the functional statements for the Office of the Director (CUH1)
- Update the functional statements for the Office of Policy and Partnerships (CUH12)
- Update the functional statements for the Office of Program Management and Operations (CUH13)
- Update the functional statements for the Office of Communication (CUH14)
- Retitle the Office of the Associate Director for Science (CUH17) to the Office of Science (CUH17)
- Establish the Office of Strategy and Innovation (CUH18)
- Establish the Office of Informatics (CUH19)
- Update the functional statements for the Division of Violence Prevention (CUHC)
- Update the functional statements for the Office of the Director (CUHC1)
- Update the functional statements for the Surveillance Branch (CUHCB)
- Update the functional statements for the Research and Evaluation Branch (CUHCC)
- Update the functional statements for the Prevention Practice and Translation Branch (CUHCD)
- Establish the Field Epidemiology and Prevention Branch (CUHCE)
- Retitle the Division of Analysis, Research, and Practice Integration (CUHF) to the Division of Injury Prevention (CUHF)
- Update the functional statements for the Office of the Director (CUHF1)
- Retitle the Statistics, Programming, and Economics Branch (CUHFB) to the Applied Science Branch (CUHFB)
- Retitle the Practice Integration and Evaluation Branch (CUHFC) to the Program Implementation and Evaluation Branch (CUHFC)
- Establish the Data Analytics Branch (CUHFD)
- Establish the Division of Overdose Prevention (CUHG)
- Establish the Office of the Director (CUHG1)
- Establish the Epidemiology and Surveillance Branch (CUHGB)
- Establish the Health Systems and Research Branch (CUHGC)
- Establish the Prevention Programs and Evaluation Branch (CUHGD)

*III.* Under Part C, Section C–B, Organization and Functions, insert the following:

- *Office of the Director (CUH1).* (1) Manages, directs, coordinates, and evaluates National Center for Injury Prevention and Control (NCIPC) activities; (2) provides administrative support, program management, and fiscal services to the center; (3) provides overall guidance and support for center-wide grant activities; (4) consults and coordinates activities with medical, engineering, and other scientific and professional organizations interested in injury prevention and control; (5) coordinates NCIPC program activities with other CDC components, other Public Health Service (PHS) agencies, PHS regional offices, other Federal agencies, State and local health

departments, community-based organizations, business and industry; (6) coordinates technical assistance to other nations and international organizations in establishing and implementing injury prevention and control programs; (7) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (8) directs and coordinates information resources management activities, the production and distribution of technical and nontechnical injury prevention and control publications and information, and the conduct of health education and health promotion activities, and; (9) supports the activities of the Secretary's Advisory Committee for Injury Prevention and Control.

• *Office of Policy and Partnerships (CUH12).* (1) Advises NCIPC and CDC leadership and staff on policy and partnership issues relevant to NCIPC; (2) conducts monitoring and analysis of policy issues potentially affecting NCIPC and its constituents; (3) coordinates partnership activities across NCIPC; (4) engages in partnerships with external organizations to meet mutual goals; (5) identifies and defines emerging or cross-cutting long-term policy issues and develops action plans that support and advance action; (6) manages issues proactively in order to minimize their negative effects, maximize their potential opportunities, and avoid the need for crisis management; (7) oversees and coordinates performance-related activities for NCIPC; (8) provides information for the development of NCIPC's annual budget submission and supporting documents; (9) provides liaison with staff offices and other officials of CDC; (10) reviews, prepares, and coordinates policy and briefing documents, and; (11) leads and coordinates the congressional strategy and outreach as informed by NCIPC and agency priorities.

• *Office of Program Management and Operations (CUH13).* (1) Coordinates NCIPC-wide program, administrative, and management support services in the areas of fiscal management, personnel, travel, performance, FOIA, workforce planning, space, and other administrative services; (2) coordinates NCIPC requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (3) manages annual budget formulation, budget justifications, and budget oversight; (4) develops and implements financial and administrative policies, procedures, and operations, as appropriate, for NCIPC, and prepares special reports and studies, as required; (5) maintains liaison with related center staff and other officials of CDC, and; (6) plans, coordinates, and provides overall management support, advice, and guidance to NCIPC.

• *Office of Communication (CUH14).* (1) Coordinates and leads the implementation of CDC-wide communication initiatives and policies, including health literacy, plain language, and CDC branding; (2) executes web development for the NCIPC intranet and provides technical assistance and training to OD offices in accessing and using NCIPC wiki for internal communication and information sharing; (3) facilitates cross-division and cross-CIO coordination of health communication activities, sharing of lessons learned, and development of best practices; (4) develops and manages relationships with a wide range of partners and customers, including other PHS agencies, Federal and State departments and agencies, and private organizations; (5) leads and oversees news media strategy and evaluation, including news response, media monitoring, proactive media engagement, media training, and long lead pitching; (6) leads digital communication and marketing strategies and manages digital channels; (7) leads strategic planning for communications and branding programs and projects for NCIPC and injury and violence issues; (8) manages and coordinates clearance of NCIPC print and non-print materials, ensuring adherence to and consistency with CDC and Department of Health and Human Services (HHS) information and publication policies and guidelines; (9) oversees, manages, and executes CDC web and digital governance through matrix management and work group structures; (10) provides communication support to OD offices and technical assistance and training in accessing centralized communication systems available through CDC's Office of the Associate Director for Communications (OADC) and other offices; (11) provides ongoing communication leadership and support to NCIPC's Office of the Director and divisions in furthering the center's mission to prevent violence and unintentional injury and to reduce their consequences; (12) provides oversight and approval for CDC logo licensing requests from external partner organizations and involving NCIPC divisions and programs; (13) represents NCIPC on cross-CIO and external committees, workgroups, and at conferences relating to health communication activities; (14) serves as primary liaison between NCIPC and OADC, and; (15) through matrix management, provides strategic communication direction and technical assistance across NCIPC to ensure all health communication activities are evidence-based and demonstrate impact.

• *Office of Science (CHU17).* (1) Provides scientific leadership for the center, and informs and guides staff on scientific matters; (2) ensures NCIPC produces the highest quality, most useful, and most relevant science possible; (3) leads the development of research priorities for the center in collaboration with divisions and offices; (4) provides staff training on scientific topics, science policy, and regulations; (5) mentors scientists and fellows; (6) manages scientific clearance for NCIPC; (7) oversees and directs Institutional Review Board, Office of Management Budget-Paperwork Reduction Act, and Confidentiality activities for the center; (8) conducts peer review of intramural research and scientific programs; (9) directs the center's Open Data Access policy and assures scientists follow CDC's policies on data release and sharing; (10) facilitates scientific collaborations between external and internal investigators; (11) leads, manages, and oversees NCIPC's external advisory board; (12) leads Healthy People Activities in partnership with divisions and offices and coordinates, tracks, and assesses progress toward Healthy People objectives; (13) manages and coordinates Epidemic Intelligence Service Officer program and activities; (14) provides scientific leadership in the areas of extramural research supported by NCIPC, National Center for Environmental Health (NCEH), and the Agency for Toxic Substances and Disease Registry (ATSDR); (15) promotes and prepares initiatives to stimulate extramural research in relevant priority areas; (16) directs all activities of the extramural research program to address priorities for NCIPC, NCEH, and ATSDR in partnership with the division programs; (17) coordinates and conducts pre-award activities for grant management, in-depth external primary and secondary peer review of extramural research applications, recommends award selections to divisions and center directors, and manages post-award activities; (18) ensures compliance with all regulations and policies governing extramural research programs, and; (19) disseminates and evaluates extramural research progress, findings, and impact.

• *Office of Strategy and Innovation (CUH18).* (1) Provides strategic leadership and coordination across a range of injury and violence topics with

a focus on the NCIPC strategic priorities; (2) leads the advancement of innovative approaches to using data to inform injury and violence prevention; (3) develops, in collaboration with divisions and offices, the overall strategic goals and objectives for NCIPC and provides leadership to develop a plan of action to achieve these goals and objectives; (4) identifies strategic opportunities to collaborate with other divisions/offices in NCIPC, CDC Centers, Institute, and Offices (CIOs), PHS Agencies, and other federal departments and Agencies, and governmental and private organizations to advance injury and violence prevention; (5) identifies emerging or cross-cutting injury and violence topics and works with other divisions/offices to support and advance action on them; (6) participates with divisions and offices in NCIPC to establish research priorities for the center, and; (7) ensures NCIPC produces the highest quality, most useful, and most relevant science possible.

• *Office of Informatics (CUH19).* (1) Reports all IT project costs, schedules, performances, and risks; (2) provides expert consultation in application development, information science, and technology to affect the best use of resources; (3) performs technical evaluation and/or integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with center strategy; (4) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Security Officer; (5) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (6) ensures adherence to CDC enterprise architecture policies, guidelines, and standards; (7) consults with divisions and offices to determine IT needs and to develop strategic and action plans; (8) participates in the evolution, identification, development, and/or adoption of appropriate informatics standards in conjunction with the Injury programs; (9) ensures coordination of data harmonization and systems interoperability within the center and facilitates linkage to related CDC-wide strategies; (10) provides leadership in the center's IRGB and coordination with CDC's IRGC; (11) collaborates with other divisions/offices in NCIPC, CIOs, PHS agencies, other federal departments and agencies, universities, NGOs, and private organizations as appropriate.

• *Division of Violence Prevention (CUHC).* (1) Provides leadership in developing and executing a national program for the prevention and control of violence and its consequences; (2) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity, mortality, disabilities, and cost of violence-related injuries and deaths, and facilitates the development of surveillance systems by state and local agencies; (3) plans, directs, conducts, and supports research focused on the causes of violence and the development and evaluation of strategies to prevent and control violence-related injuries and deaths; (4) produces new, evidence-based scientific knowledge that informs policies, practice, and programs in the violence field; (5) plans, conducts, supports, and evaluates demonstration projects and programs to prevent and control violence; (6) develops and disseminates policies, recommendations, and guidelines for the prevention of violence and its consequences; (7) proposes goals and objectives for linking health system and violence control activities with public health activities, including surveillance, prevention, health care, and rehabilitation of injury; (8) proposes goals and objectives for national violence prevention and control programs, monitors progress toward these goals and objectives, and recommends and develops guidelines for priority prevention and control activities; (9) provides expertise in public health practice, surveillance, evaluation, and research for violence prevention; (10) provides technical assistance, consultation, training, and epidemiological, statistical, educational, and other technical services to assist state and local health departments and community-based organizations in the planning, development, implementation, evaluation, and overall improvement of violence prevention programs; (11) facilitates the development and supports the dissemination of research findings and transfer of violence prevention and control technologies to federal, state, and local agencies, private organizations, and other national and international groups; (12) sustains a public health infrastructure for violence prevention at federal, state, local, and tribal levels; (13) facilitates similar strategic planning activities by other federal, state, and local agencies, academic institutions, and private and other public organizations, and; (14) collaborates with other divisions of NCIPC, CDC Centers/Institutes/Offices, HHS agencies, other federal, state, and local departments and agencies, academic institutions, and voluntary, private sector, and international organizations, as appropriate.

• *Office of the Director (CUHC1).* (1) Plans, directs, coordinates, and evaluates the activities of the division; (2) establishes and interprets policies and determines program priorities; (3) provides administrative, fiscal, and technical support for division programs and units; (4) provides national leadership and guidance in violence prevention and control program planning, development, and evaluation; (5) provides leadership for developing research in etiologic, epidemiologic, and behavioral aspects of violence prevention and control to inform policies, practice, and programs; (6) prepares and tracks responses and coordinates provision of materials requested by Congress and the HHS; (7) prepares, tracks, and coordinates controlled and general correspondence; (8) assures multi-disciplinary collaboration in violence prevention and control activities; (9) collaborates with subject matter experts, program and policy staff, develops and implements communication strategies, campaigns, and plans to meet the needs of division programs and mission; (10) coordinates with the NCIPC Office of Communication to execute and support NCIPC- and CDC-wide communication initiatives and policies; (11) develops tailored messages and materials to promote dissemination of scientific findings, evidence-based prevention strategies, priority recommendations, and guidelines through traditional media outlets, social media, and other channels; (12) provides consultation on international violence prevention and control activities of the division; (13) prepares, edits, and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the Morbidity and Mortality Weekly Report (MMWR), and other violence-related publications for the public, and; (14) in carrying out the above functions, establishes linkages and collaborates, as appropriate, with other divisions and Offices in NCIPC, with other CIOs throughout CDC, non-governmental organizations; and with national level prevention partners that impact on violence prevention programs.

• *Surveillance Branch (CUHCB).* (1) Conducts national, state, and local surveillance and surveys to identify new and to monitor recognized forms of violence and its consequences, analyzes incidence and prevalence data, and monitors trends in violence and its trajectory across the lifespan; (2) advises the Office of the Director, in DVP and

NCIPC, on the area of data and systems management and on surveillance and statistical analysis issues relevant to violence program planning and evaluation; (3) coordinates, manages, maintains and provides tabulations and maps from national surveillance systems and other data sources that contain national, state and local data on violence-related morbidity, mortality and economic costs; (4) develops and implements uniform definitions for public health surveillance of various forms of violence and related outcomes; (5) provides leadership for the development of surveillance research to inform policies, practice, and programs in the violence field; (6) provides expert consultation to federal, state, and local health agencies on surveillance system design, implementation, and evaluation, and use of surveillance data to describe the burden of violence; (7) provides information on violence surveillance to the scientific community and the general public through regular publication in peer-reviewed journals and CDC publications as well as through presentations to professional conferences and other stakeholder groups; (8) works with other branches to provide consultation, collaboration, and to ensure the use of surveillance data to inform research and prevention efforts, and; (9) in carrying out the above functions, provides leadership and collaborates with other divisions and Offices in NCIPC, other CIOs throughout CDC, and Federal, state, local, non-governmental, voluntary, and professional, organizations in all aspects of surveillance of violence and its consequences.

• *Research and Evaluation Branch (CUHCC).* (1) Plans, directs, conducts, and supports etiologic and epidemiologic research focused on causal factors, risk and protective factors, and psychosocial, cultural, and contextual determinants for violence and its consequences; (2) plans, directs, conducts, and supports applied research focused on the evaluation of strategies, policies, and interventions to prevent violent behavior and violence-related injuries and deaths; (3) evaluates the effectiveness and impact of violence prevention interventions, strategies, policies, and interventions as practiced or implemented by public health agencies and organizations at the national/regional and state/local levels; (4) conducts research to examine the context, processes, and factors that influence effective and efficient dissemination/diffusion, uptake/adoption, implementation, translation, and sustainability of violence prevention strategies, policies, and interventions; (5) develops and evaluates methodologies for conducting research evaluation; (6) contributes to the research literature by publishing regularly in peer-reviewed journals and CDC-sponsored publications that include, but are not limited to, etiology and evaluation research and syntheses; (7) monitors activities of contracts, cooperative agreements, and grants to ensure operational objectives are being met; (8) serves as a resource, collaborates, and provides technical assistance in applying research and evaluation results and techniques to the ongoing assessment and improvement of violence prevention and control programs; (9) uses research findings to develop new strategies, policies, and interventions or improve the impact of existing strategies, policies, and interventions to prevent and reduce violent behavior, its risk factors, and its consequences, and; (10) in carrying out the above functions, collaborates with other components within NCIPC, CDC, PHS, and HHS and other federal agencies, national professional, voluntary and philanthropic organizations, and international agencies.

• *Prevention Practices and Translation Branch (CUHCD).* (1) Provides leadership and support in public health practice and the application of science for maximal benefit of violence prevention programmatic efforts; (2) plans, directs, conducts, and supports program evaluation of strategies, policies, and interventions to prevent violent behavior and violence-related injuries and deaths; (3) monitors and evaluates violence prevention programs and policies, and disseminates findings to promote program accountability and program improvement; (4) promotes an enhanced and sustained infrastructure for a public health approach to violence prevention at state, local, and tribal levels; (5) generates and moves practice based knowledge into program practice and research fields; (6) develops and evaluates methodologies for conducting program evaluation; (7) identifies findings, lessons learned, and evidence from the field and collaborates with internal and external partners to inform research, surveillance, and program evaluation that builds the evidence base for effective violence prevention; (8) provides support, training, and technical assistance that applies sound prevention principles and systematic processes to enhance public health practice, including program development, implementation, improvement, and competence of personnel engaged in violence prevention and control research practices; (9) applies the best available evidence from translational science and continuous quality improvement to help communities select, adopt, adapt, implement, disseminate, sustain, and scale up programs, strategies, and activities that will lead to successful violence prevention outcomes; (10) works to reduce violence by supporting state and local violence prevention and control programs and promote the dissemination and application of science into program practice in the violence prevention field; (11) synthesizes and translates relevant research, evaluation findings, evidence, and trends and assures that communication and marketing technologies are applied to the development of practical tools, products, trainings, and guidance that enhances violence prevention programs, strategies, and activities; (12) communicates internally and externally the important work and progress of the staff, grantees, and partners; (13) plans, conducts, supports, and evaluates demonstration projects and programs to prevent and control violence; (14) proposes goals and objectives for national violence prevention and control programs, monitors progress toward these goals and objectives, and recommends and develops guidelines for priority prevention and control activities; (15) provides national leadership and guidance in violence prevention and control program planning, development, and evaluation; (16) develops and manages liaison and collaborative relationships with professional, community, international, federal, and other voluntary agencies involved in violence prevention activities, and; (17) in carrying out the above functions, provides leadership and collaborates with other divisions and offices in NCIPC, other CIOs throughout CDC, and federal, state, local, non-governmental, voluntary, professional, and international organizations in all aspects of public health practice as it relates to violence prevention.

• *Field Epidemiology and Prevention Branch (CUHCE).* (1) Conducts international surveillance and surveys to identify new and to monitor recognized forms of violence associated risk factors and consequences, analyzes incidence and prevalence data, and monitors trends in violence and its trajectory across the lifespan; (2) synthesizes and translates relevant research, evaluation findings, evidence,

and trends, and assures that communication and marketing technologies are applied to the development of practical tools, products, trainings, and guidance that enhance international violence prevention programs, strategies, and activities; (3) uses research findings to develop new strategies, policies, and interventions or to improve the impact of existing strategies, policies, and interventions to prevent and reduce violent behavior, its risk factors, and its consequences internationally; (4) serves as a resource, collaborates, and provides technical assistance in applying research and evaluation results and techniques to the ongoing assessment and improvement of violence prevention and control programs; (5) provides information on violence surveillance to the scientific community and the general public through regular publication in peer-reviewed journals and CDC publications as well as through presentations to professional conferences and other stakeholder groups; (6) disseminates scientific findings, evidence-based prevention strategies, and violence prevention guidelines through publication of research findings in professional journals and government reports, through participation in national and international meetings, seminars, and conferences, and through the development of communication initiatives; (7) establishes and sustains partnerships with other CDC CIOs and other international federal and non-government partners to improve the health and safety of youth by linking systematic measurement of violence with multi-sectoral, effective, scalable, and sustainable actions to reduce violence and its consequences; (8) leverages and applies science-based information to help organizations and government agencies to develop, evaluate, and improve programs and strategies to prevent violence-related injuries, health problems, and deaths; (9) provides expert consultation and technical assistance, consultation, training, and epidemiological, statistical, and other technical services to assist international and local health entities in the planning, implementation, application, evaluation, and overall improvement of violence monitoring and violence prevention programming, and; (10) in carrying out the above functions, collaborates with other divisions of NCIPC, CIOs, HHS agencies, other federal, state, and local departments and agencies, academic institutions, and voluntary, private sector, and international organizations, as appropriate on all aspects of violence surveillance.

• *Division of Injury Prevention (CUHF).* (1) Integrates injury prevention strategies with healthcare delivery; (2) develops and disseminates policies, recommendations, and guidelines for the prevention of injury and its consequences; (3) develops and implements evidence-based public health practices, policies, or programs that prevent or reduce unintentional and self-directed injuries; (4) identifies findings, lessons learned, and potential best practices from the field and collaborates with internal and external partners to conduct scientific investigations to examine the context, processes, and factors that influence the risk of injuries and successful implementation of prevention strategies; (5) plans, establishes, and maintains surveillance systems to monitor national trends in morbidity, mortality, disabilities, and cost of injuries and facilitates the development of surveillance systems by state and local agencies; (6) produces and disseminates new scientific knowledge to inform policies, practice, and programs in the injury field; (7) supports the development and enhancement of state, local, territorial, and tribal injury prevention programs that integrate evidence-based population health strategies, surveillance, and evaluation in collaboration with other public health and non-public health sectors to promote injury control and prevention; (8) provides expertise in statistics, computer programming, data science, economics, public health practice, surveillance, evaluation, and research to engage NCIPC and the injury prevention community; (9) leads translation and dissemination of injury prevention and control research findings and injury data to federal, state, local, territorial, and tribal public health agencies, and public and private sector organizations with responsibilities and interests related to injury prevention; (10) supports the development and enhancement of public health infrastructure for injury prevention at federal, state, local, and tribal levels through funding, workforce training, and outreach, and; (11) leads innovative data science activities to address injury data and information needs and inform research and prevention activities.

• *Office of the Director (CUHF1).* (1) Plans, directs, coordinates, and evaluates the activities of the division; (2) provides administrative, fiscal, and technical support for division programs and units; (3) leads division strategic planning and priority setting; oversees overall program performance, ensures scientific quality of activities, and implements operational policies to advance the center and agency mission; (4) collaborates with subject matter experts, program, and policy staff to develop strategic communication plans that meet agency, enter, and division priorities; (5) develops, implements, and evaluates communication strategies, campaigns, and materials to disseminate data and scientific findings, evidence-based prevention strategies, priority recommendations, programmatic successes, and guidelines through traditional and emerging communication channels; (6) develops and manages collaborative relationships with professional, community, international, governmental, and other non-governmental agencies, and tribal nations to advance injury prevention and control; (7) coordinates with the NCIPC Office of Policy and Partnerships to identify and proactively manage emerging policy issues; (8) advises division staff on policy issues and coordinates with staff to prepare briefing materials; (9) collaborates with other NCIPC divisions and offices and other CIOs throughout CDC to effectively partner on critical injury prevention programs; (10) prepares and monitors clearance of manuscripts for publication in scientific and technical journals and publications, including articles and guidelines published in the MMWR and other publications for the public; (11) prepares, tracks, and coordinates responses to all inquiries from Congress, the public, and HHS, and; (12) provides leadership for the development of research to inform policies, practice, and programs in the injury field.

• *Applied Science Branch (CUHFB).* (1) Plans and directs strategies to collect, analyze, and interpret scientific findings from surveillance, behavioral, and epidemiologic research activities for use in evaluating trends, setting priorities, and developing intervention strategies for injuries; (2) plans, directs, conducts, and supports research to assess environmental, social, behavioral, and other risk and protective factors and to develop and evaluate intervention activities to prevent and control injuries; (3) leads and coordinates a national program for the prevention and control of non-occupational injuries that occur at home and in the community in collaboration with federal, state, local, territorial, and tribal agencies, and public and private sector organizations; (4) provides leadership, research, and expert consultation to federal, state, local, territorial, tribal, and non-

governmental partners in addressing unintentional and self-directed injuries; (5) plans, directs, and supports epidemiological analysis, applied research, and demonstration projects to advance the integration of injury prevention strategies with healthcare delivery; (6) provides technical assistance to local, state, territorial, and tribal agencies to advance the integration of surveillance and injury prevention strategies with healthcare delivery; (7) develops guidelines to reduce or mitigate the impact of injury as appropriate, and; (8) disseminates scientific findings, evidence-based prevention strategies, and injury prevention guidelines by publishing research findings in professional journals and government reports, participating in national and international meetings, seminars, and conferences, and developing communication initiatives.

• *Program Implementation and Evaluation Branch (CUHFC).* (1) Coordinates and conducts research to examine the context, processes, and factors that influence effective and efficient adoption, implementation, dissemination, and sustainability of injury prevention strategies, policies, and interventions; (2) provides technical assistance in applying research and evaluation to the ongoing assessment and improvement of injury prevention and control programs; (3) supports training and outreach to increase the number and competence of personnel engaged in injury prevention and control research and practices; (4) works with local, state, territorial, and tribal public health programs to advance the use of surveillance, effective injury prevention strategies, and ongoing quality improvement activities for program planning and implementation to decrease the burden of injury; (5) collaborates with internal and external partners to disseminate effective injury prevention strategies; (6) develops and evaluates methodologies for conducting program evaluation; (7) works to generate practice-informed research and synthesize research findings for program application; (8) monitors and evaluates programs and policies and disseminates findings to promote program accountability and program improvement; (9) promotes an enhanced and sustained infrastructure for a public health approach to injury and violence prevention at state, local, territorial and tribal levels, and; (10) translates relevant research, evaluation findings, and other evidence into practical tools, products, and guidance that enhances injury prevention programs, strategies, and activities.

• *Data Analytics Branch (CUHFD).* (1) Plans, establishes, and maintains surveillance systems to monitor national and state-level trends in morbidity, mortality, disabilities, and costs of injuries; (2) analyzes and translates data into information that is disseminated to stakeholders for program planning, evaluation, and decision-making; (3) collaborates with and advises other divisions/offices in NCIPC, CDC CIOs, and external partners on traditional and emerging statistical, economic, surveillance, and data science methods; (4) collaborates with the NCIPC Office of Strategy and Innovation and the Office of Informatics, NCIPC divisions, and other CDC CIOs to increase efficiencies in collection, management, and usability of injury and violence data; (5) develops, maintains, and disseminates tabulations and maps from national, state, and local data on injury morbidity, mortality, economic costs, and risk and protective factors through CDC's WISQARS™ (Web-based Injury Statistics Query and Reporting system) and other NCIPC online tools; (6) develops, evaluates, and implements innovative statistical, economic, policy research, computer programming, and data science methods for application to injury surveillance, research studies, and program planning, and evaluation; (7) leads and collaborates with other scientists on epidemiologic studies and statistical and economic analyses and provides technical advice in the areas of study design, sampling, and the collection, management, analysis, and interpretation of injury and economic data; (8) produces high quality statistical, economic, and policy reports, publications, and presentations for dissemination, and; (9) leads and coordinates with the NCIPC Office of the Director and other divisions on innovative pilot projects and scaling up promising strategies to utilize non-traditional datasets and novel methods for data collection and analysis in public health.

• *Division of Overdose Prevention (CUHG).* (1) Plans, establishes, evaluates, uses, and collaborates on surveillance systems to monitor local, state, and national trends in morbidity, mortality, risk and protective factors, and costs related to drug use and overdose and evaluates the effectiveness of prevention strategies; (2) plans, directs, conducts, and supports research focused on the causes, risks, and protective factors associated with drug use and overdose and identifies strategies at the federal, state, and local level, as well as in health systems, to prevent drug use and overdose; (3) evaluates the effectiveness, costs, and impact of drug use and overdose-related interventions, strategies, policies, and programs as practiced or implemented by public health agencies and organizations at the federal, state, territorial, and local levels, including health systems and by law enforcement/public safety; (4) identifies, develops, evaluates, and implements programs and informs policies or guidelines to prevent drug use and overdose; (5) facilitates the translation, dissemination, and sustainability of practice- and research-tested findings into widespread local, state, and national public health and health system practice to prevent drug use and overdose; (6) provides technical assistance, consultation, training, and capacity building to federal, state, and local agencies, non-profit and international organizations, professional associations, and medical providers to prevent drug use and overdoses; (7) establishes and maintains relationships across HHS, CDC, NCIPC and its partners, including state, territorial, and local public health agencies, other federal agencies, the healthcare sector, professional organizations, and other constituents, including academic institutions and international organizations, that address drug use and overdose prevention, and; (8) develops or is actively involved in the development of drug use and overdose prevention educational materials, training courses, tools, and other communication materials, as appropriate, based on identified needs of stakeholders.

• *Office of the Director (CUHG1).* (1) Plans, directs, and evaluates the activities of the division; (2) provides cross-cutting leadership and guidance in policy formation and program planning, development, implementation and evaluation for drug use and overdose prevention; (3) provides over-arching personnel, operational, administrative, fiscal, and technical support for division programs and units; (4) assures multi-disciplinary collaboration in drug use and overdose prevention activities; (5) provides leadership for developing research in etiologic, epidemiologic, and behavioral aspects of drug use and overdose prevention, and for coordinating division activities with others involved in related-work across NCIPC, CDC, HHS, and other stakeholders; (6) prepares, edits, and monitors policy review and general clearance of manuscripts for publication in peer-reviewed scientific and technical journals, including articles

and guidelines published in the MMWR, as well as communication products for a variety of audiences; (7) prepares, tracks, and coordinates controlled and general correspondence; (8) prepares responses and coordinates provision of materials requested by center and agency leadership, Congress, and HHS; (9) Plans, develops, conducts, and evaluates cross-cutting communication projects and campaigns to inform the media, health professionals, the public, and others about drug use and overdose prevention; (10) provides media, communication, and marketing support to the division; (11) serves as primary liaison between the division and relevant NCIPC Office of the Director, in the areas of communication, policy/partnership, science, administration/operations, informatics, and strategy/innovation; (12) designs, develops, and coordinates the publication of print and audiovisual materials such as fact sheets, newsletters, speeches and presentations, exhibits, social media messages, press releases, media advisories, and educational videos; (13) develops and evaluates messages, materials and health communication products to promote and disseminate scientific findings, evidence-based prevention strategies, priority recommendations, and guidelines through various platforms; (14) coordinates with NCIPC Office of Communication to execute and support NCIPC- and CDC-wide communication initiatives and policies related to overdose prevention; (15) coordinates with NCIPC Office of Policy and Partnerships to execute and support NCIPC- and CDC-wide policy and partner related initiatives related to overdose prevention; (16) collaborates with the Extramural Research Program Office on extramural research, policies, and procedures including peer review; (17) implements policies and procedures related to human subjects research protections, paperwork reduction act regulations, federal advisory committee act regulations, data sharing policies, and scientific authorship and misconduct; (18) supports scientific training opportunities, including the EIS training program, and; (19) collaborates, as appropriate, with non-governmental organizations, academic institutions, philanthropic foundations, and other stakeholders to achieve the mission of the division.

• *Epidemiology and Surveillance Branch (CUHGB).* (1) Plans, establishes, and evaluates surveillance systems to monitor national, state, and local trends in morbidity, mortality, and costs related to drug use and overdose; (2) develops and implements uniform definitions for public health surveillance of various overdose outcomes; (3) prepares routine surveillance reports of national, state, and local trends in drug use and overdose risk factors, behaviors, outcomes, and disparities, which includes the mapping of geographic variations; (4) uses surveillance systems to monitor overdoses and poisonings to create incidence rates to inform prevention programs and provide data for planning in the community and in health systems; (5) develops, designs, implements, and evaluates innovative surveillance strategies or systems that address gaps in existing CDC surveillance systems in collaboration with colleagues in NCIPC and other CIOs for application to overdose surveillance, epidemiologic studies, program evaluation, and programmatic activities; (6) plans and directs strategies to collect, analyze, and interpret scientific findings from surveillance, behavioral, and epidemiologic research activities for use in evaluating trends, setting priorities, and developing intervention strategies for overdose prevention; (7) prepares epidemiologic and scientific papers for publication in the peer-reviewed literature and for presentation at scientific and professional conferences; (8) proposes and serves as technical advisors and project officers for epidemiologic activities with state and local entities; (9) plans and conducts research projects that fill gaps in surveillance and investigates emerging and novel drug overdose threats, including toxicology; (10) serves as scientific and technical experts in drug overdose epidemiology and surveillance methodology to state and local health departments and to advisory groups at the national/international level; (11) supports training to increase the number and competence of personnel engaged in overdose epidemiology and surveillance, and; (12) prepares and produces high quality reports, publications, and other material for information presentation and dissemination by NCIPC staff to a wide-variety of stakeholders.

• *Health Systems and Research Branch (CUHGC).* (1) Supports evaluation, applied research, and demonstration projects to determine the effectiveness of an intervention, improve the effectiveness of healthcare systems, and to support the understanding of how health systems can best be integrated with public health prevention efforts to reduce or mitigate the impact of overdoses and related harms; (2) develops, implements, evaluates, and translates clinical guidelines and other materials for clinicians and health systems to reduce or mitigate the impact of overdoses and related harms; (3) collaborates with state, territorial, and local health departments to integrate applied research and evaluation findings, as well as quality improvement initiatives within health systems; (4) provides expert consultation to federal, state, local, and international health agencies on applied research, evaluation, and health system implementation strategies; (5) provides scientific technical assistance to health systems, states, and localities to increase their capacity to develop, implement, and evaluate system-level overdose prevention programs; (6) develops, implements, and evaluates tools and resources for use in electronic health records and health IT systems to address overdoses and helps support data integration across data systems; (7) contributes to the research literature, by publishing regularly in peer-reviewed journals and CDC-sponsored publications on topics that include, but are not limited to, programmatic, evaluation, health systems, or community based strategies, and; (8) supports dissemination of research, evaluation, translation, and program implementation to federal, state, and local health agencies, public and private sector organizations, and other national and international groups with responsibilities and interests related to overdose prevention.

• *Prevention Programs and Evaluation Branch (CUHGD).* (1) Provides programmatic leadership and support for drug use and overdose prevention activities in states, territories, and local jurisdictions; (2) provides technical assistance and project officer support to grantees on implementation of evidence- and practice-based interventions with the greatest reach and impact in states, territories, and local jurisdictions, including sustaining and scaling up programs, strategies, and activities over time in collaboration with public safety/law enforcement and other stakeholders; (3) generates and promotes adaptation and adoption of novel evidence-based strategies to prevent drug use and overdose, including addressing vulnerable populations; (4) leverages epidemiology and surveillance data about drug overdose morbidity, mortality, and risk and protective factors to inform, tailor, and evolve

prevention strategies across the life course; (5) monitors and evaluates the outcomes of division investments in states, territories, and local jurisdictions using rigorous evaluation methods and widely disseminates findings to improve programmatic activities; (6) publishes the findings of programmatic evaluations in the peer-reviewed literature and other reports and participate in scientific and professional conferences; (7) serves as a resource, collaborates, and provides comprehensive technical assistance and training to states, territories, local jurisdictions and other partners to reduce drug use and overdose; (8) synthesizes relevant research, evaluation findings, evidence, and trends to develop practical guidance and resources that enhance overdose prevention programs, strategies, and activities; (9) uses research findings to develop new strategies, policies, and interventions or to improve the impact of existing strategies, policies, and interventions to prevent and reduce overdose, its risk factors, and its consequences; (10) collaborates with state, territorial, and local jurisdictions, public safety/law enforcement, and other partners to use data to drive decision-making and action, and; (11) provides direct support to states, territories, and local jurisdictions to prevent drug use and overdose.

*IV. Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

**Alex M. Azar II,**

*Secretary.*

[FR Doc. 2019–15169 Filed 7–16–19; 8:45 am]

**BILLING CODE 4160–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1428]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on electronic drug product reporting for human drug compounding outsourcing facilities under section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

**DATES:** Submit either electronic or written comments on the collection of information by September 16, 2019.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2013–N–1428 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80

FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act**

*OMB Control Number 0910–0827—Extension*

The Drug Quality and Security Act added section 503B to the FD&C Act (21 U.S.C. 353b) creating a category of entities called ''outsourcing facilities.'' Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that must meet all the requirements described in section 503B, including registering with FDA as an outsourcing facility and submitting regular reports identifying the drugs compounded by the outsourcing facility during the previous six-month period. The first of these reports must be submitted upon initial registration as an outsourcing facility. Thereafter, semiannual product reports must be submitted, once during the month of June and once during the month of December, for as long as an establishment remains registered as an outsourcing facility.

In addition, drug products compounded in an outsourcing facility can qualify for exemptions from the FDA approval requirements in section 505 of the FD&C Act (21 U.S.C. 355) and the requirement to label products with adequate directions for use under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) if the requirements in section 503B are met.

To help respondents understand the statutory requirements, how we interpret them, and the associated information collection, we developed the guidance document entitled, ''Guidance for Industry; Electronic Drug Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The guidance explains that, once an entity has elected to register as an outsourcing facility, it must submit reports identifying the drugs compounded by the outsourcing facility. The guidance also communicates who must report, the format of the report, the content to include in each report, when to report, how reports are submitted to FDA, and the consequences of outsourcing facilities' failure to submit reports.

Based on current data for outsourcing facilities, we estimate that 75 outsourcing facilities will submit an initial report identifying all drugs compounded in the facility in the previous six months. For the purposes of this estimate, each product's structured product labeling (SPL) submission is considered a separate response, and therefore each facility's product report will include multiple responses. Taking into account that a particular product that is compounded into different strengths from different sources of active ingredient can be reported in a single SPL response, we estimate that each facility will average 76 products. Our estimate is based on current product reporting data.

We expect each product report will consist of multiple SPL responses per facility and estimate that preparing and submitting this information electronically may take up to 2 hours for each initial SPL response. We also estimate that the 75 registered outsourcing facilities will submit a report twice each year identifying all drugs compounded at the facility in the previous six months.

As stated above, we estimate on average 76 SPL responses per facility and that preparing and submitting this information electronically will take approximately 30 minutes per response. We have reduced our burden estimate for semiannual product submissions since outsourcing facilities can save each SPL response once initially created and submitted. For subsequent reports, an outsourcing facility may resubmit the same file(s) after changing the RootID and version number (both SPL metadata), effective date (to identify the reporting period), and the number of units produced, along with other data as appropriate, to appropriate values for the reporting period. Furthermore, if a product was not compounded during a particular reporting period, no SPL response needs be sent for that product during that reporting period.

We expect to receive no more than one waiver request, each, from the electronic submission process for initial product reports and semiannual reports, and that each waiver request will take 1 hour to prepare and submit.

We therefore estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Product reporting for compounding outsourcing facilities | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Initial product reports | 75 | 1.01 | 76 | 2 | 152 |
| Waiver request from electronic submission of initial product reports | 1 | 1 | 1 | 1 | 1 |
| June product reports | 75 | 1.01 | 76 | .5 | 38 |
| December product reports | 75 | 1.01 | 76 | .5 | 38 |
| Waiver request from electronic submission of product reports | 1 | 1 | 1 | 1 | 1 |
| Total | | | | | 230 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on submissions we have received, we have reduced the number of responses significantly since our original estimate establishing the collection. This results in an overall reduction to the information collection by 36,072 hours.

Dated: July 9, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15124 Filed 7–16–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–3586]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection resulting from focus groups about drug products as used by FDA.

**DATES:** Submit either electronic or written comments on the collection of information by September 16, 2019.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2016–N–3586 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not

in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

## Focus Groups About Drug Products as Used by the Food and Drug Administration

*OMB Control Number 0910–0677—Extension*

Focus groups provide an important role in gathering information because they allow for a more indepth understanding of individuals' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and, as a qualitative research tool, have three major purposes:

- To obtain information that is useful for developing variables and measures for quantitative studies;
- To better understand people's attitudes and emotions in response to topics and concepts; and
- To further explore findings obtained from quantitative studies.

We use information gathered from focus group findings to test and refine ideas and to help develop messages and other communications, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

Our Center for Drug Evaluation and Research, as well as other Agency components, engage focus groups about regulated drug products on a variety of topics related to consumer, patient, or healthcare professional perceptions and use of drug products and related materials. These materials may include, but are not limited to direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, medication guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

Annually, we project that 20 studies will be initiated using 160 focus groups with an average of 9 persons per group. We assume each focus group will last an average of 1.75 hours. We estimate the burden for the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Focus Group Study | 1,440 | 1 | 1,440 | 1.75 | 2,520 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 10, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15150 Filed 7–16–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0380]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedure by which an applicant may obtain an assignment or designation determination for combination products.

**DATES:** Submit either electronic or written comments on the collection of information by September 16, 2019.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2009–N–0380 for ''Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this

requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Product Jurisdiction: Assignment of Agency Component for Review of Premarket Applications—21 CFR Part 3**

*OMB Control Number 0910–0523—Extension*

This regulation relates to Agency management and organization and has two purposes. The first is to implement section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)), as added by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), and amended by the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), by specifying how FDA will determine the organizational component within FDA assigned to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of: (1) A drug and a device; (2) a device and a biological product; (3) a biological product and a drug; or (4) a drug, a device, and a biological product. The second purpose of this regulation is to enhance the efficiency of Agency management and operations by providing procedures for classifying and determining which Agency component is designated to have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute.

The regulation establishes a procedure by which an applicant may obtain an assignment or designation determination. The regulation requires that the request include the identity of the applicant, a comprehensive description of the product and its proposed use, and the applicant's recommendation as to which Agency component should have primary jurisdiction, with an accompanying statement of reasons. The information submitted would be used by FDA as the basis for making the assignment or designation decision. Most information required by the regulation is already required for premarket applications affecting drugs, devices, biological products and combination products. The respondents will be businesses or other for-profit organizations. FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR part | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 3 | 61 | 1 | 61 | 24 | 1,464 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 552 hours and a corresponding decrease of 23 responses/records. This adjustment is based on the number of submissions we received since the last OMB approval.

Dated: July 10, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15166 Filed 7–16–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0536]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device User Fee Cover Sheet, Form FDA 3601

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by August 16, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0511. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Medical Device User Fee Cover Sheet, Form FDA 3601**

*OMB Control Number 0910–0511—Extension*

The Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), and the Medical Device User Fee Amendments of 2007 (Title II of the Food and Drug Administration Amendments Act of 2007), authorizes FDA to collect user fees for certain medical device applications. Under this authority, companies pay a fee for certain new medical device applications or supplements submitted to the Agency for review. Because the submission of user fees concurrently with applications

and supplements is required, the review of an application cannot begin until the fee is submitted. Form FDA 3601, the ''Medical Device User Fee Cover Sheet,'' is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference between the fees submitted for an application with the actual submitted application by using a unique number tracking system. The information collected is used by FDA's Center for Devices and Radiological Health and FDA's Center for Biologics Evaluation and Research to initiate the administrative screening of new medical device applications and supplemental applications.

The total number of annual responses is based on the average number of cover sheet submissions received by FDA in recent years. The number of received annual responses includes cover sheets for applications that were qualified for small businesses and fee waivers or reductions. The estimated hours per response are based on past FDA experience with the various cover sheet submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates (18 minutes).

In the **Federal Register** of December 28, 2018 (83 FR 67287), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received.

The comment was generally supportive of the user fee cover sheet for medical devices. However, the comment also noted that there are costs associated with the preparation of the cover sheet. The comment did not suggest specific changes to our cost or hour burden estimates provided in this information collection request. We have not changed our estimates as a result of the comment.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| FDA Form No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 3601 | 6,379 | 1 | 6,379 | 0.30 (18 minutes) | 1,914 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 350 hours and a corresponding increase of 1,165 responses/records. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: July 10, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15161 Filed 7–16–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2015–N–3662]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by August 16, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0584. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—21 CFR Part 866

*OMB Control Number 0910–0584—Extension*

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with section 513(a)(1)(B) of the FD&C Act, because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance recommendations, and ''other appropriate actions as the Secretary deems necessary'' (section 513(a)(1)(B) of the FD&C Act). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on March 22, 2006 (71 FR 14377), establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification was codified in 21 CFR 866.3332, a regulation that describes the new classification for reagents for detection of specific novel influenza A viruses and sets forth the special controls that

help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation refers to the document entitled ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents. The guidance recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available from the World Health Organization, National Institutes of Health, and other public health entities, sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices, and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g) to determine if any design changes may be necessary.

FDA estimates that one respondent will be affected annually. The respondent will collect this information twice per year; each response is estimated to take 15 hours. This results in a total data collection burden of 30 hours.

The guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

In the **Federal Register** of March 5, 2019 (84 FR 7904), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Activity | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Recordkeeping regarding reagents for detection of specific novel influenza A viruses | 1 | 2 | 2 | 15 | 30 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Manufactures are increasingly adopting in silico methods (computational analysis) for the detection of specific novel Influenza A viruses over traditional laboratory techniques. Therefore, few manufactures are using reagents for detection of specific novel influenza A viruses. Based on these industry trends, we estimate a decrease in the number of total annual records and a corresponding decrease of 270 hours in the total burden since our last OMB approval.

Dated: July 10, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15160 Filed 7–16–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0297]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prevention of Salmonella Enteritidis in Shell Eggs During Production; Recordkeeping and Registration Provisions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by August 16, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0660. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Prevention of *Salmonella Enteritidis* in Shell Eggs During Production—Recordkeeping and Registration Provisions—21 CFR 118.10 and 118.11

*OMB Control Number 0910–0660—Extension*

Shell eggs contaminated with *Salmonella Enteritidis* (SE) are responsible for more than 140,000 illnesses per year. The Public Health Service Act (PHS Act) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce such regulations as ''are necessary to prevent the introduction, transmission,

or spread of communicable diseases from foreign countries into the States . . . or from one State . . . into any other State'' (section 361(a) of the PHS Act (42 U.S.C. 264(a))). This authority has been delegated to the Commissioner of Food and Drugs. Under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(4)), a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of the FD&C Act.

Under part 118 (21 CFR part 118), shell egg producers are required to implement measures to prevent SE from contaminating eggs on the farm and from further growth during storage and transportation. Shell egg producers also are required to maintain records concerning their compliance with part 118 and to register with FDA. As described in more detail with regard to each information collection provision of part 118, each farm site with 3,000 or more egg laying hens that sells raw shell eggs to the table egg market, other than directly to the consumer, must refrigerate, register, and keep certain records. Farms that do not send all of their eggs to treatment are also required to have an SE prevention plan and to test for SE.

Section 118.10 of FDA's regulations (21 CFR 118.10) requires recordkeeping for all measures the farm takes to prevent SE in its flocks. Since many existing farms participate in voluntary egg quality assurance programs, those respondents may not have to collect any additional information. Records are maintained on file at each farm site and examined there periodically by FDA inspectors.

Section 118.10 also requires each farm site with 3,000 or more egg laying hens that sells raw shell eggs to the table egg market, other than directly to the consumer, and does not have all of the shell eggs treated, to design and implement an SE prevention plan.

Section 118.10 requires recordkeeping for each of the provisions included in the plan and for plan review and modifications if corrective actions are taken.

Finally, § 118.11 of FDA's regulations (21 CFR 118.11) requires that each farm covered by 21 CFR 118.1(a) register with FDA using Form FDA 3733. The term ''Form FDA 3733'' refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which is available at *https://www.access.fda.gov.* We strongly encourage electronic registration because it is faster and more convenient. The system can accept electronic registrations 24 hours a day, 7 days a week. A registering shell egg producer receives confirmation of electronic registration instantaneously once all the required fields on the registration screen are completed. However, paper registrations will also be accepted. Form FDA 3733 is available for download for registration by mail or CD–ROM.

Recordkeeping and registration are necessary for the success of the SE prevention measures. Written SE prevention plans and records of actions taken due to each provision are essential for farms to implement SE prevention plans effectively. Further, they are essential for us to be able to determine compliance. Information provided under these regulations helps us to notify quickly the facilities that might be affected by a deliberate or accidental contamination of the food supply. In addition, data collected through registration is used to support our enforcement activities.

*Description of Respondents:* Respondents to this information collection include farm sites with 3,000 or more egg laying hens that sell raw eggs to the table egg market, other than directly to the consumer.

In the **Federal Register** of March 26, 2019 (84 FR 11309), we published a 60-day notice requesting public comment on the proposed collection of information. Two comments were received, however only one was responsive to the four information collection topics solicited. Specifically, the comment suggested that farms could save money by pooling samples while conducting environmental testing, proffering a 2015 research study. The comment continued by suggesting that the testing protocol be adjusted from four 1,000-egg samples to two 1,000 egg samples. We note, however, that testing four 1,000-egg samples over an 8-week period results in approximately a 95 percent probability that a positive egg will be detected from a flock that is producing SE-contaminated eggs with a prevalence of 1 in 1,400, while testing fewer than 4,000 eggs over a period of 8 weeks, as required by 21 CFR 118.7, results in less than a 95 percent probability that a positive egg would be detected from a flock that is producing SE-contaminated eggs at that rate. While we are aware of the referenced research, we decline to relax the current requirements provided for under 21 CFR 118.7 and 118.8 as doing so may reduce certain associated costs that would not provide the same level of protection necessary to ensure the public health. The comment did not suggest a revision to our estimated burden.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Description and 21 CFR section | Number of recordkeepers [2] | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Refrigeration Records, § 118.10(a)(3)(iv) | 2,600 | 52 | 135,200 | 0.5 (30 minutes) | 67,600 |
| Testing, Diversion, and Treatment Records, § 118.10(a)(3)(v) through (viii) (positive) [3]. | 343 | 52 | 17,836 | 0.5 (30 minutes) | 8,918 |
| Egg Testing, § 118.10(a)(3)(vii) | 331 | 7 | 2,317 | 8.3 | 19,231 |
| Environmental Testing, § 118.10(a)(3)(v) [3] | 6,308 | 23 | 145,084 | 0.25 (15 minutes) | 36,271 |
| Testing, Diversion, and Treatment Records, § 118.10(a)(3)(v) through (viii) (negative) [3]. | 5,965 | 1 | 5,965 | 0.5 (30 minutes) | 2,983 |
| Prevention Plan Review and Modifications, § 118.10(a)(4). | 331 | 1 | 331 | 10 | 3,310 |
| Chick and Pullet Procurement Records, § 118.10(a)(2). | 4,731 | 1 | 4,731 | 0.5 (30 minutes) | 2,366 |
| Rodent and Other Pest Control, § 118.10(a)(3)(ii), and Biosecurity Records, § 118.10(a)(3)(i). | 9,462 | 52 | 492,024 | 0.5 (30 minutes) | 246,012 |

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

| Description and 21 CFR section | Number of recordkeepers [2] | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Prevention Plan Design, § 118.10(a)(1) | 350 | 1 | 350 | 20 | 7,000 |
| Cleaning and Disinfection Records, § 118.10(a)(3)(iii). | 331 | 1 | 331 | 0.5 (30 minutes) | 166 |
| Total | | | | | 393,857 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Some records are kept on a by-farm basis and others are kept on a by-house basis.
[3] Calculations include requirements for pullet and layer houses.

We base our estimates for the recordkeeping burden and the reporting burden on our experience with similar recordkeeping activities and the number of registrations and cancellations received in the past 3 years.

The number of recordkeepers estimated in column 2 of table 1 is drawn from estimates of the total number of layer and pullet houses affected by part 118. We assume that those farms that were operating according to recognized industry or State quality assurance plans prior to their compliance date under part 118 were already largely in compliance with the plan design and recordkeeping provisions discussed in this section, and therefore did not experience additional costs to comply with recordkeeping provisions. We found that 59 percent of farms with more than 50,000 layers are members of State or industry quality assurance plans. Fewer than 8 percent of farms with fewer than 50,000 layers are members of quality assurance plans. Thus, we estimate the number of layer farms incurring a new recordkeeping burden because of part 118 to be 2,600, and the number of houses affected to be 4,731.

Prevention plan design (§ 118.10(a)(1)) records are kept on a per farm basis, so we assume that new prevention plan design is only undertaken by new entrants to the industry. Refrigeration records (§ 118.10(a)(3)(iv)) are also kept on a per farm basis so the estimated number of recordkeepers for this provision is 2,600.

Records of chick and pullet procurement (§ 118.10(a)(2)), rodent and other pest control (§ 118.10(a)(3)(ii)), and biosecurity (§ 118.10(a)(3)(i)) are kept on a per house basis, so the estimated number of recordkeepers for these provisions is 4,731.

Records of cleaning and disinfection (§ 118.10(a)(3)(iii)) are also kept on a per house basis, but only need to be kept in the event that a layer house tests environmentally positive for SE. Prevention plan review and modifications (§ 118.10(a)(4)) also need to be performed every time a house tests positive, which we estimate that 7.0 percent test positive. Therefore, the number of recordkeepers for these provisions is calculated to be 331 (4,731 houses × 0.070) annually.

Records of testing, diversion, and treatment (§ 118.10(a)(3)(v) through (viii)) are kept on a per house basis and include records on flocks from pullet houses. We estimate that there are one-third as many pullet houses as there are layer houses. Therefore, the total number of recordkeepers for these provisions is 6,308 (4,731 + (4,731/3)). The number of annual records kept depends on whether houses test positive for SE. Annually, 343 layer and pullet houses ((4,731 layer houses × 0.070) + (4,731/3 pullet houses) × 0.0075)) are expected to test positive and 5,965 are expected to test negative ((4,731 layer houses × 0.930) + (4,731/3 pullet houses) × 0.9925)).

We assume that refrigeration records are kept on a weekly basis on a per farm basis under § 118.10(a)(3)(iv)). We estimate that 2,600 recordkeepers maintain 52 records each for a total of 135,200 records and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for refrigeration records is calculated to be 67,600 hours (135,200 records × 0.5 hour).

We assume that records of testing, diversion, and treatment under § 118.10(a)(3)(v) through (viii) are kept weekly in the event a layer house tests environmentally positive for SE. We estimate that 343 layer and pullet houses test positive and thus 343 recordkeepers maintain 52 records each for a total of 17,836 records and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for testing, diversion, and treatment records in the event of a positive test result is calculated to be 8,918 hours (17,836 records × 0.5 hour).

Given a positive environmental test for SE, we estimate the weighted average number of egg tests per house under § 118.10(a)(3)(vii)) to be 7. We estimate that 331 recordkeepers maintain 7 records each for a total of 2,317 records and that it takes approximately 8.3 hours per recordkeeping. Thus, the total annual burden for egg testing is calculated to be 19,231 hours (2,317 records × 8.3 hours).

We estimate that all 1,577 pullet and 4,731 layer houses not testing prior to their compliance date under part 118 (6,308 recordkeepers) incur the burden of a single environmental test annually under § 118.10(a)(3)(v)). The number of samples taken during the test depends on whether a farm employs the row based method (an average of 12 samples per house) or the random sampling method (32 samples per house). We estimate that roughly 50 percent of the houses affected employ a row based method and 50 percent employ a random sampling method, implying an average of 23 samples per house. The time burden of sampling is estimated on a per swab sample basis. We assume it takes 15 minutes to collect and pack each sample. Thus, the total annual burden for environmental testing is calculated to be 36,271 hours (145,084 records × 0.25 hour).

We estimate that records of testing, diversion, and treatment under § 118.10(a)(3)(v) through (viii) are kept annually in the event a layer house tests environmentally negative for SE. We estimate that 5,965 layer and pullet houses test negative and thus 5,965 recordkeepers maintain 1 record of that testing that takes approximately 0.5 hour per record. Thus, the total annual burden for testing, diversion, and treatment records in the event of a negative test result is calculated to be 2,983 hours (5,965 records × 0.5 hour).

Prevention plan review and modifications under § 118.10(a)(4)) need to be performed every time a house tests positive. We estimate that 331 layer

houses test positive requiring plan review and modifications and that it takes 10 hours to complete this work. Thus, the total annual burden for prevention plan review and modifications in the event of a positive test result is calculated to be 3,310 hours (331 records × 10 hours).

We estimate that chick and pullet procurement records under § 118.10(a)(2) is kept roughly once annually per layer house basis. We estimate that 4,731 layer houses maintain 1 record each and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for chick and pullet procurement recordkeeping is calculated to be 2,366 hours (4,731 records × 0.5 hour).

We estimate that rodent and other pest control records under § 118.10(a)(3)(ii) and biosecurity records under § 118.10(a)(3)(i) are kept weekly on a per layer house basis. We assume that 4,731 layer houses maintain a weekly record under each provision. Thus, we estimate 9,462 recordkeepers maintain 52 records each for a total of 492,024 records. We estimate a recordkeeping burden of 0.5 hours per record for a total of 246,012 burden hours (492,024 records × 0.5 hour).

New prevention plan design required by § 118.10(a)(1) is only undertaken by new farms and records are kept on a per farm basis. We estimate that there are 350 new farm registrations annually, and we assume that this reflects 350 new farms requiring prevention plan design. This is an increase from our previous estimate based on new registrations received. We estimate that it takes 20 hours to complete this work. Thus, the total annual burden for prevention plan design is calculated to be 7,000 hours (350 records × 20 hours).

Cleaning and disinfection recordkeeping under § 118.10(a)(3)(iii) needs to be performed every time a house tests positive. We estimate that 331 layer houses test positive requiring 1 record each and that it takes approximately 0.5 hour per recordkeeping. Thus, the total annual burden for cleaning and disinfection recordkeeping in the event of a positive test result is calculated to be 166 hours (331 records × 0.5 hour).

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Description and 21 CFR section | Form | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| Registrations or Updates, § 118.11. | FDA 3733 [2] | 350 | 1 | 350 | 2.3 | 805 |
| Cancellations, § 118.11 | FDA 3733 | 30 | 1 | 30 | 1 | 30 |
| Total | | | | | | 835 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The term "Form FDA 3733" refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which is available at *https://www.access.fda.gov* per § 118.11(b)(1).

This estimate is based on the average number of new shell egg producer registrations and cancellations received in the past 3 years under § 118.11. We estimate that we will receive an average of 350 registrations or updates per year over the next 3 years and that it takes the average farm 2.3 hours to register, taking into account that some respondents completing the registration may not have readily available internet access. Thus, the total annual burden for new shell egg producer registrations or updates is calculated to be 805 hours (350 respondents × 2.3 hours).

We estimate that we will receive 30 cancellations per year over the next 3 years and that cancelling a registration, on average, requires a burden of 1 hour, taking into account that some respondents may not have readily available internet access. Thus, the total annual burden for cancelling shell egg producer registrations is calculated to be 30 hours (30 cancellations × 1 hour).

We have increased our burden estimate for the information collection based on an increase in annual new farm registrations.

Dated: July 10, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15162 Filed 7–16–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Population Affairs; Awards Unsolicited Proposal for the CFDA Number: 93.974

**AGENCY:** Office of Population Affairs, Office of the Assistant Secretary for Health, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The Office of Population Affairs (OPA) announces the award of a single-source grant in response to an unsolicited proposal from the University of Northern Colorado, Greely, Colorado. The proposal submitted was not solicited either formally or informally by any federal government official.

**FOR FURTHER INFORMATION CONTACT:** Diane Foley at *diane.foley@hhs.gov* or by telephone at 240–453–8200.

**SUPPLEMENTARY INFORMATION:**

*Recipient:* University of Northern Colorado, Greely, Colorado.

*Purpose of the Award:* The purpose of this grant is to expand the knowledge base regarding cessation strategies that adolescents and young adults use to maintain their reproductive health. It will provide valuable data on how family planning services can incorporate technology and cessation counseling strategies in primary care medical clinics and other clinic workflows, including Title X clinics.

*Amount of Award:* $499,385 in Federal Fiscal Year (FFY) 2019 funds and estimated $500,000 in FFY 2020 funds subject to the enactment of appropriations and availability of funds.

*Project Period:* July 15, 2019–July 14, 2021.

OPA performed an objective review of the unsolicited proposal from the University of Northern Colorado to expand and evaluate the OPTIONS for Integrated Health program. This proposal builds on a previous study, which is the only study in existence that has scientifically demonstrated how the Transtheoretical Model of Health Behavior Change (Prochaska & Velicer) works with sexually active adolescents and young adults. This cutting edge research identified the population of

adolescents and young adults most ready for behavior change including cessation from sexual activity. Based on an external and internal review of the proposal, OPA determined that it has merit.

The University of Northern Colorado and the proposed Principle Investigator have experience expanding scientific knowledge on harm-reduction/cessation strategies adolescents and young adults use to maintain their reproductive health. They will further broaden knowledge in harm-reduction/cessation strategies by further testing an innovative digital health technology in underserved adolescent/clinics in counties experiencing high levels of unintended pregnancy and STI rates.

This award is being made non-competitively because there is no current, pending, or planned funding opportunity announcement under which this proposal could compete.

*Legislative Authority:* Title X of the Public Health Service Act, SEC. 1004 [300a–2].

Dated: July 8, 2019.

**Diane Foley,**

*Deputy Assistant Secretary for Population Affairs.*

[FR Doc. 2019–15120 Filed 7–16–19; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences.

*Date:* July 30, 2019.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

*Contact Person:* Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 11, 2019.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–15148 Filed 7–16–19; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; ART and Neurotoxicities.

*Date:* August 6, 2019.

*Time:* 11:00 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center Building, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: July 11, 2019.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–15147 Filed 7–16–19; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of X02 Applications.

*Date:* July 26, 2019.

*Time:* 3:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Tracy Koretsky, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12F, Bethesda, MD 20892–6200, 301–594–2886, *tracy.koretsky@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 11, 2019.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–15143 Filed 7–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel; HEAL Initiative: Limited Competition: Resource Coordinating Center for Pragmatic and Implementation Studies for the Management of Pain (PRISM) to Reduce Opioid Prescribing (U24 Clinical Trial Not Allowed).

*Date:* July 23, 2019.

*Time:* 12:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ashlee Tipton, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Center for Complementary and Integrative Health, 6707 Democracy Boulevard, Room 401, Bethesda, MD 20892, 301–451–3849, *ashlee.tipton@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the receipt date of application.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 10, 2019.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–15145 Filed 7–16–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0082]**

### Agency Information Collection Activities; Revision of a Currently Approved Collection: Application To Replace Permanent Resident Card

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 16, 2019.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0082 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

#### Comments

The information collection notice was previously published in the **Federal Register** on April 26, 2019, at 84 FR 17870, allowing for a 60-day public comment period. USCIS received 4 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0002 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–90; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–90 is used by USCIS to determine eligibility to replace a Lawful Permanent Resident Card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information

collection I–90 (paper) is 444,601 and the estimated hour burden per response is 2 hours; the estimated total number of respondents for the information collection I–90 (electronic) is 296,400 and the estimated hour burden per response is 1.59 hours; and the estimated total number of respondents for the information collection biometrics is 741,001 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,227,449 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $254,163,343.

Dated: July 12, 2019.

**Jerry L. Rigdon,**

*Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2019–15179 Filed 7–16–19; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2019–N070; FXES11140100000–190–FF01E00000]**

### Incidental Take Permit Application To Participate in the Douglas County Multiple Species General Conservation Plan, Douglas County, Washington

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Davis and Davis Farms (applicant) for an Endangered Species Act (ESA) incidental take permit (ITP) in association with the Douglas County Multiple Species General Conservation Plan (GCP). The applicant agrees to implement conservation measures consistent with the GCP that will minimize and mitigate the impacts of the taking on the Columbia Basin distinct population segment of the pygmy rabbit, the greater sage-grouse, the Washington ground squirrel, and the Columbian sharp-tailed grouse. Covered activities include dryland farming of wheat and horse grazing on the Davis and Davis farm in Douglas County, Washington. We invite the public to review and comment on the permit application and associated documents.

**DATES:** To be fully considered, written comments from interested parties must be received on or before August 16, 2019.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the ''Davis and Davis Farms GCP Permit:''

- *Internet Document Review:* You may access electronic copies of the GCP and associated decision documents online at *https://www.fws.gov/wafwo/.*
- *Comment or Request Documents by Email:* Include ''Davis and Davis Farms–GCP Permit'' in the subject line of the message and send to *wfwocomments@fws.gov.*
- *Comment or Request Documents by U.S. Mail or Comment by Hand-Delivery:* Public Comments Processing, Attn: FWS–R1–ES–2019–N070; U.S. Fish and Wildlife Service; c/o Jessica Gonzales, Central Washington Field Office; 215 Melody Lane, Suite 103; Wenatchee, WA 98801. Printed copies of the permit application and associated documents are available for public inspection, by appointment, during normal business hours, at this address.

**FOR FURTHER INFORMATION CONTACT:** Jessica Gonzales, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Central Washington Field Office (see **ADDRESSES**); telephone 509–665–3508, extension 2000; email *Jessica_Gonzales@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Davis and Davis Farms (applicant) for an Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) incidental take permit (ITP), in association with the Douglas County Multiple Species General Conservation Plan (GCP). The GCP was developed by the Foster Creek Conservation District in coordination with the Service. The purpose of the GCP is to facilitate an efficient and effective process for prospective applicants to obtain ITPs addressing land-use activities, take of listed species, and conservation measures that are covered under the GCP, in order to offset the impacts of take on covered species. A GCP is a programmatic habitat conservation plan, authorized under section 10(a)(1)(B) of the ESA.

In this case, the applicant agrees to implement conservation measures consistent with the GCP that will minimize and mitigate the impacts of the taking on the following covered species: The federally endangered Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*), the Federal candidate greater sage-grouse (*Centrocercus urophasianus*), the Federal candidate Washington ground squirrel (*Urocitellus washingtoni*), and the unlisted species Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*). Covered activities include dryland farming of wheat and horse grazing on the Davis and Davis farm in Douglas County, Washington. We invite the public to review and comment on the permit application and associated documents.

### Background

Section 9 of the Endangered Species Act (ESA; 16 U.S.C. 1531) prohibits ''take'' of fish and wildlife species listed as endangered or threatened. Section 10(a)(1)(B) of the ESA, along with Service policy dated October 5, 2007, on GCPs, allows the Service to issue ITPs to non-Federal entities for incidental take of endangered or threatened species that is caused by otherwise lawful activities, providing the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Regulations governing permits for endangered and threatened species are found in 50 CFR 17.22 and 17.32, respectively.

The Service has conducted a review of the site plan submitted with the ITP application and has made a preliminary determination that the site plan meets all necessary requirements of the Douglas County Multiple Species GCP and is consistent with previous environmental analyses and decision documents associated with the GCP.

The GCP and an associated environmental assessment (EA), developed pursuant to the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), were made available for public review during a 60-day public comment period between November 14, 2014, and January 13,

2015 (79 FR 68289). The Service finalized the EA in June of 2015, and a finding of no significant impact (FONSI) was signed on September 17, 2015. Findings and recommendations addressing the issuance of future ITPs for activities covered under the GCP were also signed on September 17, 2015. The Service will not make a final permit decision until after the end of the 30-day comment period, following full consideration of all comments received.

**Proposed Action**

The Service proposes to issue the requested 47-year ITP based on the applicant's commitment to implement the site plan prepared pursuant to the requirements of the GCP, if permit issuance criteria are met. Covered activities include dryland farming of wheat and horse grazing. The area covered under the proposed ITP encompasses about 4,017 acres owned and leased by Davis and Davis Farm within the area covered by the GCP in Douglas County, Washington.

Take of the following covered species is likely to occur in conjunction with activities covered under the GCP: The Columbia Basin distinct population segment of pygmy rabbit, the greater sage-grouse, the Washington ground squirrel, and the Columbian sharp-tailed grouse. Such take is expected to occur on the following lands owned or leased by Davis and Davis Farms: 710.8 acres of shrub-steppe habitat; 2,576.2 acres of agriculture lands (dryland and irrigated agriculture); and 730.4 acres of Conservation Reserve Program/State Acres For Wildlife Enhancement (CRP/SAFE) shrub-steppe habitat that might be converted to dry-land or irrigated crop production in the future. These acreages are surrogates for the anticipated amount of incidental take and are within the amounts considered in the EA and FONSI, and the Biological Opinion/Conference Opinion addressing the issuance of ITPs in association with implementation of the GCP.

As a GCP participant, Davis and Davis Farms will aid in covered species recovery through implementation of conservation measures resulting in appropriate grazing management, maintenance of existing shrub-steppe habitat, implementation of timing restrictions, notification to the Service prior to conversion of occupied CRP/SAFE habitat, and additional measures. The GCP also includes criteria to evaluate CRP/SAFE acres, and other protected land acres across Douglas County, and if those acres decrease below certain thresholds, the Foster Creek Conservation District will work with the Service and others to address the decrease, or revisit the GCP. With implementation of the site plan, we do not anticipate CRP/SAFE acres threshold criteria will be triggered or changes in the numbers, distribution, or reproduction of the covered species will appreciably reduce the likelihood of their survival and recovery in the wild.

**Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request written information, views and suggestions with respect to the application for the incidental take permit.

**Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

**Next Steps**

The Service previously approved the GCP, and recommended approval of future permit applications developed consistent with the GCP, concluding that such permits would meet the issuance criteria for ITPs, and would not result in significant effects to the human environment. After public review, we will evaluate the permit application, associated documents, and any comments received, to confirm that the permit application meets the requirements of section 10(a)(1)(B) of the ESA and the GCP. We will also evaluate whether issuance of the requested ITP would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation under section 7(a)(2) of the ESA on anticipated ITP actions. In addition, we will evaluate whether issuance of the requested ITP will be consistent with the finding of no significant impact under NEPA issued in relation to the GCP. As noted above, we will not make a final permit decision until after the end of the 30-day comment period, and we will fully consider all comments received during the comment period. If we determine that all requirements are met we will issue an ITP to the applicant for the take of the covered species, incidental to otherwise lawful covered activities implemented under the site plan prepared in accordance with the GCP.

**Authority**

We provide this notice in accordance with the requirements of section 10 of the ESA and its implementing regulations (50 CFR 17.22) and NEPA and its implementing regulations (40 CFR 1506.6).

**Robyn Thorson,**

*Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2019–15220 Filed 7–16–19; 8:45 am]

**BILLING CODE 4333–15–P**

---

## DEPARTMENT OF THE INTERIOR

## Geological Survey

**[GX19ZQ00G402A00; OMB Control Number 1028–NEW]**

## Agency Information Collection Activities: ShakeAlert Community Feedback Form

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before September 16, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Sara K. McBride by email at *skmcbride@usgs.gov* or by telephone at 650–750–5270.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

*Abstract:* This research is to assist development of the West Coast Earthquake Early Warning System that will send the public a ShakeAlert before they feel shaking from an earthquake that has started. As part of the ShakeAlert, the West Coast Early Warning system, we need to understand how long it will take to get messages to people's phones via wireless emergency alerts (WEA), applications (apps) or another alerting platform. We will be collecting the information via community feedback forms or surveys. These feedback forms will be made available via media, social media, and internal emails. The information being collected is temporal information and our alerting platforms; namely: Wireless Emergency Alerts (WEA), mobile applications (APPS), sirens, and broadcast alerts. Participants will be asked to provide exact timings in terms of when alerts were delivered to either their devices or themselves, to determine system latency. They will be asked to provide details about their devices, mobile network, and proximate location (address, zip code, or building name). The final four questions explore what people know about the system, preferred delivery channels, and messaging priorities.

*Title of Collection:* ShakeAlert Community Feedback Form.

*OMB Control Number:* 1028–NEW.

*Form Number:* NA.

*Type of Review:* New.

*Respondents/Affected Public:* Individuals/households.

*Total Estimated Number of Annual Respondents:* 2,000.

*Total Estimated Number of Annual Responses:* 2,000.

*Estimated Completion Time per Response:* Six minutes.

*Total Estimated Number of Annual Burden Hours:* 200.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* Once per year.

*Total Estimated Annual Nonhour Burden Cost:* None.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Douglas Given,**

*ShakeAlert Project Coordinator.*

[FR Doc. 2019–15154 Filed 7–16–19; 8:45 am]

**BILLING CODE 4338–11–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–452 and 731–TA–1129–1130 (Second Review)]**

### Raw Flexible Magnets From China and Taiwan; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on raw flexible magnets from China and revocation of the antidumping duty orders on raw flexible magnets from China and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

**Background**

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on January 2, 2019 (84 FR 8) and determined on April 12, 2019 that it would conduct expedited reviews (84 FR 26156, June 5, 2019).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on July 12, 2019. The views of the Commission are contained in USITC Publication 4921 (July 2019), entitled *Raw Flexible Magnets from China and Taiwan, Investigation Nos. 701–TA–452 and 731–TA–1129–1130 (Second Review).*

By order of the Commission.

Issued: July 12, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–15218 Filed 7–16–19; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0102]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; FEL Out of Business Records

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-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. The proposed collection OMB 1140–0102 (FEL Out of Business Records) is being revised due to an increase in the number of respondents to this IC, which has also contributed to a rise in both the public burden hours and cost associated with this IC, since the last renewal in 2016.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, regarding 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: Ed Stely, Branch Chief, Tracing Operations and Records Management (TORM) either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Edward.Stely@atf.gov,* or by telephone at 304–260–1515.

**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 (check justification or form 83):* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* FEL Out of Business Records.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number (if applicable):* 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 (if applicable):* Individuals or households.

*Abstract:* Per 27 CFR 555.128, when an explosive materials business or operation is discontinued, the records must be delivered to the ATF Out of Business Records Center within 30 days of the business or operation discontinuance.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 249 respondents will utilize this information collection, and it will take each respondent approximately 30 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 124.5 or 125 hours, which is equal to 249 (# of respondents) * 1 (# of responses per respondents) * .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* The adjustments associated with this information collection include an increase in the total respondents and burden hours by 49 and 25 respectively, since the last renewal in 2016. Consequently, the cost burden has also risen by $8,842 since 2016.

*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 12, 2019.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2019–15178 Filed 7–16–19; 8:45 am]

**BILLING CODE 4410–FY–P**

---

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on June 20, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on March 25, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 29, 2019 (84 FR 18087).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2019–15142 Filed 7–16–19; 8:45 am]

**BILLING CODE 4410–11–P**

---

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on June 21, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Eben Jenkins (individual member), Tigard, OR; and Kenny Munro (individual member), London, UNITED KINGDOM, have been added as parties to this venture.

Also, Grass Valley Group, Richmond, IN; and Paul Briscoe (individual member), Toronto, CANADA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc.

intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 21, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2019–15122 Filed 7–16–19; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on June 26, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lauren Brom (individual member), New York, NY; Sunil Soni (individual member), Warfield, UNITED KINGDOM; Patrick Ng (individual member), Chromos, SINGAPORE; Ontotext (aka Sirma AI), Sofia, BULGARIA; Eric Neumann (individual member), Duxbury, MA; Hall Gregg (individual member), Chattanooga, TN; Avi Ma'ayan (individual member), New York, NY; and Anthony DiBiase (individual member), Wellesley, MA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on April 8, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 2, 2019 (84 FR 18864).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics Unit, Antitrust Division.*

[FR Doc. 2019–15149 Filed 7–16–19; 8:45 am]

**BILLING CODE 4410–11–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Information and Regulatory Affairs; Procedures for Participating in the Appeals Process for the 2020 Census Local Update of Census Addresses (LUCA)

**AGENCY:** Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Executive Office of the President.

**ACTION:** Notice of final procedures.

**SUMMARY:** As part of implementing the Census Address List Improvement Act of 1994, the Office of Management and Budget (OMB) publishes the final procedures for the 2020 Census Local Update of Census Addresses (LUCA) Appeals process, as described in the **SUPPLEMENTARY INFORMATION** section below. Tribal, state and local governments participating in the 2020 Census LUCA Operation may appeal determinations made by the Census Bureau with respect to their suggested changes to the 2020 Census Address List. Proposed procedures were published as a notice for public comment in the **Federal Register** on May 21, 2018. This final notice summarizes the comments received on the proposed procedures, and provides responses to those comments. For informational purposes, this final notice further describes the 2020 Census LUCA Feedback materials that the Census Bureau will provide to participating governments and how those governments can use the materials as the basis for an appeal.

*Electronic Availability:* **Federal Register** notices are available electronically at *https://www.federalregister.gov/.*

**DATES:** The final procedures for the 2020 Census LUCA Appeals process, which reflect revisions based on public comment received in response to the notice on proposed procedures, are effective immediately.

**ADDRESSES:** Please send any questions about the final procedures for the 2020 Census LUCA Appeals process to: Nancy Potok, Chief Statistician, Office of Management and Budget, 9242 New Executive Office Building, Washington, DC 20503; email: *MBX.OMB.OIRA.2020LUCAAppeals Process@OMB.eop.gov;* fax number: (202) 395–7245.

Correspondence about the Census Bureau's 2020 Census LUCA Operation should be sent to: Robin Pennington, Deputy Chief, Decennial Census Management Division Program Management Office, U.S. Census Bureau, Washington, DC 20233; telephone: (301) 763–8132; email: *robin.a.pennington@census.gov.*

Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

**FOR FURTHER INFORMATION CONTACT:** Kerrie Leslie, Office of Management and Budget, 9215 New Executive Office Building, Washington, DC 20503; telephone: (202) 395–1093; email: *MXB.OMB.OIRA.2020LUCAAppeals Process@OMB.eop.gov,* with the subject ''2020 Appeals Process Question''.

The 2020 Census LUCA Appeals Office can be reached at 301–763–6869 or via email at *INFO@LUCA-Appeals.gov.*

**SUPPLEMENTARY INFORMATION:**

#### The Census Address List Improvement Act of 1994

The Census Address List Improvement Act of 1994 (Pub. L. 103–430) mandates the establishment of a program to be used by the Census Bureau for developing the decennial census address list and address lists for other censuses and surveys conducted by the Bureau. The Act's provisions direct the Secretary of Commerce to: (1) Publish standards defining the content and structure of address information that tribal, state and local governments may submit to be used in developing a national address list; (2) develop and publish a timetable for the Census Bureau to receive, review, and respond to submissions; and (3) provide a response to the submissions regarding the Census Bureau's determination for each address. The Act provides further that OMB's Administrator of the Office of Information and Regulatory Affairs (OIRA), acting through the Chief Statistician and in consultation with the Census Bureau, shall develop a process for tribal, state, and local governments to appeal determinations of the Census

Bureau. In addition, the Act directs the U.S. Postal Service to provide the Secretary of Commerce with address information, as appropriate, for use by the Census Bureau.

The Act authorizes the Census Bureau to provide designated officials of tribal, state, and local governments with access to census address information. Prior to the 2000 Census, the Census Bureau was limited to providing block summary totals of addresses to tribal and local governments. The 2000 Census marked the first decennial census where tribal and local governments were able to review and suggest updates to the census address list. The 2010 Census was the first decennial census to invite State governments to participate in the LUCA Operation. The 2020 Census LUCA Operation marks the first time that address list materials sent to participants for review include the addresses for and designations of group quarters locations.

**Summary of and Responses to Comments Received on the Proposed Procedures for Participating in the Appeals Process for the 2020 Census Local Update of Census Addresses Operation (LUCA)**

The proposed procedures for participating in the appeals process for the 2020 Census LUCA Operation were published in the **Federal Register** on May 21, 2018 (83 FR 23,487). That notice sought public comment on the proposed procedures. OMB received 24 comments in response to the notice and, of those, 23 advocated for a less burdensome approach to the appeals process for both the participants appealing the Census Bureau's determinations and the 2020 Census LUCA Appeals Office staff. Ten comments requested that the participants have longer than 45 days to review the Census Bureau determinations and file an appeal. One comment was out-of-scope.

*Summary of and Responses to Comments:*

(1) The burden described in most of the comments was related to providing supporting documentation for each appealed address individually. It was suggested that it would be extremely expensive and time-consuming for tribal, state, and local governments to provide documents such as those recommended in the procedures for every address that they appeal. It was suggested that a more generalized approach be used for documenting the validity of their appealed addresses.

*Response:* To help alleviate the burden that participants noted in their comments, the 2020 Census LUCA Appeals procedures have been revised to allow a variety of approaches for providing supporting documentation for appealed addresses. For example, the same set of supporting evidence may be applied to a group of addresses instead of requiring unique documentation for each address (see Section 3 on Supporting Documentation).

(2) Comments related to the duration of the appeals process noted that 45 days was not enough time for participants to complete the process.

*Response:* While commenters suggested that the 45-day review and submission period was not ample time to complete the process, no changes will be made to the 45-day period. The 2020 Census LUCA Appeals Office staff must be afforded sufficient time to review the appealed addresses and make a determination. This, in conjunction with the strict deadline for accepted appeals to be included in the Census Bureau's nonresponse follow-up operation, is the reason the 45-day timeframe cannot be extended. Thus, the timeframe for submitting an appeal to the 2020 Census LUCA Appeals Office remains 45 days from the date an eligible government receives their LUCA Feedback materials.

**The Census Bureau's 2020 Census LUCA Operation—Background**

The 2020 Census LUCA Operation was available to tribal, state, and local governments located in areas for which the Census Bureau develops an address list in advance of the census. This operation provided for a review and update of the 2020 Census LUCA Address List. The Census Bureau issued final procedures for participation in the 2020 Census LUCA Operations in a **Federal Register** Notice on November 7, 2016 (81 FR 78,109). This section provides more detail on the process that tribal, state, and local governments used to participate in the 2020 Census LUCA Operation.

For the 2020 Census LUCA Operation, participating governments (participants) review and provide updates to the census address list. Participants opted to receive materials in paper or computer-readable formats, or to use Census Bureau supplied software to update their jurisdiction's map features and address list. Participating governments with more than 6,000 addresses were required to use a computer readable address list or the Census Bureau's supplied software. All LUCA participants were required to geocode each address they added (*i.e.,* identify for an individual address its correct geographic location including the latitude/longitude coordinate location or the correct state, county, census tract, and census block codes). Additionally, all LUCA participants could make updates and corrections to the features on the Census Bureau-supplied maps or digital shapefiles.

All participants were required to sign a Confidentiality Agreement in accordance with Section 9 of Title 13 of the United States Code to maintain the confidentiality of the census address information they received from the Census Bureau for review. Participants received the full 2020 Census Address List, an Address Count List, and census maps or digital shapefiles of their jurisdiction. Participants were required to have the means to secure the census address list containing Title 13 information, including through the time the 2020 Census LUCA Appeals process is complete (should the participant file an appeal).

**The 2020 Census LUCA Address Validation Process**

Addresses submitted by 2020 Census LUCA participants were validated by Census Bureau staff. During LUCA validation, Census Bureau staff reviewed address updates (additions, corrections, and deletions) supplied by the participants, including confirming that the addresses are listed in the correct census block. Census Bureau staff then verified, modified, or rejected the updates submitted, and when appropriate, added, deleted, or corrected entries on the 2020 Census LUCA Address List. Corrections to census maps based on LUCA participant submissions were also processed. For the 2020 Census LUCA Operation, the Census Bureau will provide feedback to LUCA participants, conveying the Bureau's determinations of their submission of additions and updates to the census address information, during the summer of 2019.

**The 2020 Census LUCA Feedback Materials**

The 2020 Census LUCA Feedback materials will reflect the determinations made by the Census Bureau. For the 2020 LUCA Appeals process, the participants will be able to appeal addresses rejected from their submission during the Census Bureau's LUCA review or those deleted by another level of government also participating in the 2020 Census LUCA Operation. Addresses may not be added or corrected during the appeals process. New addresses resulting from new construction should have been included in the 2020 Census Address List by participating in the Census Bureau's New Construction Program.

The Census Bureau will provide 2020 Census LUCA Feedback materials to qualifying governmental jurisdictions in the same media format requested for the initial LUCA review materials. The Census Bureau will create these materials over the span of approximately 6 weeks starting in July 2019 and ending in September 2019. The 2020 Census LUCA Feedback materials are to be used by participants as the basis for any appealed addresses.

The Census Bureau will provide 2020 Census LUCA Feedback materials to tribal, state, or local governments that took part in any of the following actions:

(1) Submitted updates (*i.e.,* additions, corrections, deletions) to city-style (house number and street name) addresses on the LUCA Address List, or

(2) Certified to the Census Bureau at the end of their 2020 Census LUCA review that the LUCA Address List was correct and needed no update.

The 2020 Census LUCA Feedback materials that the Census Bureau will provide to each participating government will document which local address additions and updates the Census Bureau accepted or did not accept. The 2020 Census LUCA Feedback materials will use the same census blocks and mapped boundaries as in the review phase of the operation (*i.e.,* with a reference date of January 1, 2017).

The 2020 Census LUCA Feedback materials will include:

(1) A Detailed Feedback Address List that shows each correctly formatted address record addition and update submitted by the participant and a processing code that identifies a specific action taken by the Census Bureau on that address record.

(2) A Full Address Count List that shows the current residential address counts, including those for housing units and group quarters, for each census block within the participant's jurisdiction.

(3) A Feedback Address Update Summary Report that displays the tallies of actions taken by the Census Bureau for all of the address updates submitted by the participant.

(4) Feedback maps that include feature updates provided by the participant.

Since the issuance of the May 21, 2018, **Federal Register** notice (83 FR 23,487) on the proposed procedures for the 2020 Census LUCA Appeals process, the Census Bureau made a decision not to include the full address list as part of the 2020 Census LUCA Feedback materials. The Census Bureau determined based on 2020 Census LUCA participant experiences during the 2020 Census LUCA review phase that the full address list may be more burdensome than beneficial to participants as part of the 2020 Census LUCA Feedback materials.

**The OMB Office of Information and Regulatory Affairs Administrator's Final 2020 Census LUCA Appeals Process**

To ensure that tribal, state, and local governments participating in the 2020 Census LUCA Operation have a means to appeal the Census Bureau's determinations, the Census Address List Improvement Act of 1994 requires that the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA), acting through the Chief Statistician and in consultation with the Census Bureau, develop an Appeals Process to resolve any disagreements that may remain after participating governments receive the Census Bureau's LUCA Feedback materials and make a final decision on the inclusion of appealed addresses. This Appeals Process will be carried out through a temporary federal entity, the 2020 Census LUCA Appeals Office. This section describes the final procedures for the Appeals Process.

*A. Overview of the Final 2020 Census LUCA Appeals Process*

Governmental jurisdictions that participated in the 2020 Census LUCA Operation and completed a review of LUCA materials may file an appeal if they meet the eligibility criteria. When filing an appeal, eligible governments must include evidence in the form of supporting documentation that substantiates the existence and location of appealed addresses. (Eligible governments are those that participated in the 2020 Census LUCA Operation and have addresses that are considered to be eligible for appeal, as described later in this Notice.) For the 2020 Census LUCA Appeals process, the same set of supporting evidence may be applied to a group of addresses instead of requiring unique documentation for each address. Eligible tribal, state, and local governments may file an appeal with the 2020 Census LUCA Appeals Office and must submit their appeal within 45 calendar days from the time of their 2020 Census LUCA Feedback material receipt. Appeals submitted after the 45-day period are no longer eligible. The 2020 Census LUCA Appeals Office staff will notify the submitting eligible government and the Census Bureau of receipt of the eligible government's submission.

For both the 2000 Census LUCA Appeals process and the 2010 Census LUCA Appeals process, the appeals process afforded 15 calendar days for the Census Bureau to provide information to the LUCA Appeals Office to support the determination made for an address or group of addresses. For the 2020 Census LUCA Appeals process, the Census Bureau has decided proactively to provide to the 2020 Census LUCA Appeals Office staff read-only access to all documentation supporting the address determination made by the Census Bureau. This will include read-only access to the LUCA production control system, the LUCA master table, and each participating government's LUCA Feedback material. For this reason, the 15-day period for the Census Bureau to provide any additional information to support their determination is no longer necessary.

Appeal decisions will be based on a review of a written explanation and supporting documentation provided to the 2020 Census LUCA Appeals Office staff by the eligible government and a review of the documentation supplied proactively by the Census Bureau explaining how they made their address determination. The 2020 Census LUCA Appeals Office is scheduled to conclude its review no later than January 3, 2020, to ensure that its decisions are reflected in the 2020 Census Address List used for the nonresponse follow-up operation. The decisions made by the 2020 Census LUCA Appeals Office will be final.

The final eligibility criteria and detailed requirements for appeal submissions are provided below. New addresses or corrections to previously submitted addresses will not be accepted as part of the Appeals Process.

*B. Final 2020 Census LUCA Appeals Procedures for LUCA Participants*

**Eligibility Criteria for Filing an Appeal**

Participants who either returned additions or corrections to the 2020 Census LUCA Address List or certified to the Census Bureau after their LUCA review that the 2020 Census LUCA Address List was correct and required no update are eligible to file an appeal.

Eligible governments may appeal addresses that were provided during the LUCA operation that the Census Bureau did not accept. They may also appeal addresses that were not commented on during their initial LUCA review that were since deleted from the 2020 Census LUCA Address List either by the Census Bureau during subsequent internal census operations or by another level of government participating in LUCA. However, eligible governments may not use the Appeals Process to

provide corrections to previously submitted addresses.

When filing an appeal, eligible governments must provide:

(1) Contact information for the governmental jurisdiction filing the appeal, along with a Confidentiality Agreement Form for any staff member participating in the 2020 Census LUCA Appeals submission who has not yet completed one;

(2) Correctly formatted address record information for each address being appealed; and

(3) Supporting documentation that independently or collectively authenticates both the existence and location of addresses being appealed.

Each of these components are described in further detail below:

(1) Contact Information and Confidentiality Agreement Forms

Eligible governments must provide the following contact information for the governmental jurisdiction filing an appeal:

(a) Name of the governmental jurisdiction, and

(b) Name, mailing address, telephone number, and electronic mail address (if any) of that jurisdiction's contact person for the appeal.

(c) In addition, all staff members participating in the 2020 Census LUCA Appeals submission must have a completed Confidentiality Agreement Form on record. Eligible governments must provide completed Confidentiality Agreement Forms for any staff member who did not previously complete one for the 2020 Census LUCA Operation.

(2) Address Information

Address information may be submitted in computer-readable form or on paper. The eligible government must provide the complete address record as it appears in the Detailed LUCA Feedback Address List for each appealed address. This action ensures that the unique Control ID number as well as the address and geographic location are retained with the record. The participant action code also must be provided. This record should be consistent with items listed below:

(a) Complete address (including the house number, unit designator (if applicable), street name, and Zip Code) or if there is no address for a location, a physical description of the housing unit or living quarters.

(b) Control ID number, as provided by the Census Bureau for each address record as part of the feedback address list.

(c) Participant submitted action code.

(d) Census Bureau processing code.

(e) State code, County code, census tract number, census block number, and Latitude/Longitude coordinate location.

Additional details for submitting an appeal are provided in Chapter 3 of the 2020 Census LUCA Feedback Respondent Guides, available at *https://www.census.gov/programs-surveys/decennial-census/about/luca.html.*

(3) Supporting Documentation

The 2020 Census LUCA Appeals Office requires eligible governments to provide evidence of existence and location for appealed addresses. To this end, eligible governments must provide the supporting documentation for appealed addresses as specified in (a) through (c) below.

For the 2020 Census LUCA Appeals process, the same set of supporting evidence may be applied to a group of addresses instead of requiring unique documentation for each address. For example, eligible governments may supply one set of supporting evidence for related addresses such as those associated with a single housing development or complex if the set of supporting evidence substantiates the existence of the full set of linked addresses. In other cases, a set of addresses may be supported by a written description of a detailed process to review and verify the appealable addresses using reliable sources. This narrative must be supplemented with a selection of appealed addresses associated with an exact location and proven with one of the evidence types suggested by item (c) below.

Eligible governments must submit the following supporting documentation with their appeals:

(a) A written explanation of the eligible government's position that the Appeals Office staff should adopt its recommendations.

(b) A detailed description of the address source(s) that help to verify the existence of the address or group of addresses. For each address source used to support the existence of the address or group of addresses, the description should include the following:

1. Date of address source;

2. how often the address source is updated;

3. methods used to update the source;

4. quality assurance procedure(s) used in maintaining the address source; and

5. how the address source is used by the eligible government and/or by the originator of the source.

(c) Evidence to support the existence of the appealed address. The evidence must be linked directly to a particular appealed address or particular set of appealed addresses. Useful types of supporting evidence include, but are not limited to:

1. Documentation of on-site inspection or interview of residents or neighbors;

2. Issuance of recent occupancy permit(s) for unit(s). Building permits are not acceptable, as they do not ensure that a unit has been built;

3. Provision of utility records (electricity, gas, sewer, water, telephone, etc.) for the addresses; these records should show that the address is not a service to a commercial unit, or an additional service to an existing address (such as a second telephone line).

4. Provision of other governmental services (housing assistance, welfare, etc.) to residents of the unit(s);

5. Photography including aerial photography or satellite imagery;

6. Land use maps;

7. Local 911 emergency lists, if they distinguish residential from commercial units;

8. Tax assessment records, if they distinguish residential from commercial units.

*C. Deadline for an Eligible Government To File an Appeal*

The filing date for appeals by the eligible government must be within 45 calendar days after that government's receipt of the 2020 Census LUCA Feedback materials. ''Receipt'' as used herein is defined as the delivery date reported to the Census Bureau by the delivery service that transmits the feedback materials to the government. The ''filing date'' for the appeals shall be the date the appeal is transmitted, and all appeals filed after the 45-calendar day deadline are not eligible.

In order to safeguard the confidential address materials covered by Title 13, the transmitting of an appeal to the 2020 Census LUCA Appeals Office must adhere to the Census Bureau's specific guidelines for handling materials supplied with the feedback materials, and must keep a record of the date it transmits these materials to the 2020 Census LUCA Appeals Office.

*D. Where To File an Appeal*

Appeals must be sent to the 2020 Census LUCA Appeals Office either electronically using the secure web-incoming module described in the feedback materials or by mail to this address: 2020 Census LUCA Appeal Office, Attn: LUCA Appeals Office, 1201 E. 10th Street, Jeffersonville, IN 47132.

Upon receipt of an appeal, the 2020 Census LUCA Appeals Office will send a confirmation of receipt to the eligible jurisdiction. The 2020 Census LUCA

Appeals Office also will notify Census Bureau staff of the filed appeal.

*E. Documentation and Supporting Evidence Provided by the Census Bureau*

For both the 2000 Census and the 2010 Census, the LUCA appeals process afforded 15 calendar days for the Census Bureau to provide information to the LUCA Appeals Office to support the determination made for an address or group of addresses. For the 2020 Census LUCA Appeals process, the Census Bureau has decided to provide proactively to the LUCA Appeals Office staff read-only access to all documentation supporting the address determination made by the Census Bureau. This will include read-only access to the LUCA production control system, the LUCA master table, and each participating government's LUCA Feedback material. For this reason, the 15-day period for the Census Bureau to provide any additional information to support its determination is no longer necessary.

*F. The Appeals Review and Final Decision Process*

The Appeals Process will be administered by staff in the 2020 Census LUCA Appeals Office. The 2020 Census LUCA Appeals Office will operate for approximately 15 months as a temporary Federal entity and will include Appeals Officers who are trained in the procedures for processing an appeal and in the examination and analysis of address information, locations of addresses and housing units, and supporting materials. For each appeal, the 2020 Census LUCA Appeals Officers will review the Census Bureau's feedback materials and the written explanation and supporting evidence submitted by the eligible government, and any materials supplied by the Census Bureau. No testimony or oral argument will be received by the 2020 Census LUCA Appeals Office. The 2020 Census LUCA Appeals Officers will apply the following principles in conducting their review:

(1) The Appeals Officer shall consider the quality of the supporting evidence provided by the eligible government as the basis for determining the validity of an address (or group of addresses) and its (their) location(s). Indicators demonstrating quality of supporting evidence may include, but are not limited to, timeliness, update methods and frequency of update, provenance, and congruence with other sources. For example, useful supporting evidence may include, but would not be limited to, local data sources like recent documentation of an on-site inspection, aerial photography, or a provision of utilities to the residence.

(2) For any address for which the Appeals Officer determines that the quality of the supporting evidence supplied by the eligible government and the Census Bureau is of equal weight, the Appeals Officer shall decide in favor of the eligible government.

(3) For any address submitted by more than one governmental entity for which the Appeals Officer determines the quality of the supporting evidence submitted by both parties is of equal weight, the Appeals Officer will decide in favor of the lower level of government.

At the conclusion of the review of an appealed address (or group of appealed addresses), the Appeals Officer will prepare a draft written analysis for review by the Director or Deputy Director of the 2020 Census LUCA Appeals Office. The Director or Deputy Director will issue a written final determination to both the eligible government and the Census Bureau. The written final determination will include a brief explanation of the 2020 Census LUCA Appeals Office decision, and will specify which appealed addresses were accepted and which were not accepted. Each written final determination shall become part of the administrative record of the 2020 Census LUCA Appeals Process. The decision of the 2020 Census LUCA Appeals Office is final. The Census Bureau will include all addresses accepted as a result of the Appeals Process in the 2020 Census Address List, and will attempt to enumerate them all during the nonresponse follow-up operation. Inclusion in this operation does not guarantee that a successful enumeration will occur, or that the address will be included in the final 2020 Census data summaries.

*G. Completion of the Appeals Process*

The 2020 Census LUCA Appeals Process is scheduled to be completed by the end of January 2020. Appeals will be reviewed and completed on a flow basis, with the written final determination issued to the concerned parties as soon as possible.

**Executive Orders 12866 and 13771**

This final procedural notice is not a significant regulatory action under Executive Order 12866. In addition, this final notice is not an E.O. 13771 regulatory action.

**Paperwork Reduction Act**

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 Paperwork Reduction Act (PRA), Chapter 35 of Title 44 of the United States Code, unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, the Census Bureau requested, on November 14, 2016, and OMB granted, on December 15, 2016, clearance for the information collection requirements of this operation (OMB Control Number 0607–0994).

**Nancy Potok,**

*Chief Statistician, Office of Management and Budget.*

[FR Doc. 2019–15168 Filed 7–16–19; 8:45 am]

BILLING CODE 3110–01–P

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 19–04]**

## Millennium Challenge Corporation Economic Advisory Council Call for Nominations

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., the Millennium Challenge Corporation (MCC) is hereby soliciting representative nominations for the MCC Economic Advisory Council (''The EAC''). The EAC serves MCC in a solely advisory capacity and provides advice and guidance to economists, evaluators, leadership of the Department of Policy and Evaluation (DPE), and senior MCC leadership regarding relevant trends in development economics, applied economic and evaluation methods, poverty analytics, as well as modeling, measuring, and evaluating development interventions, including without limitation social and gender inclusion. In doing so, an overarching purpose of the EAC is to sharpen MCC's analytical methods and capacity in support of continuing development effectiveness. It also serves as a sounding board and reference group for assessing and advising on strategic policy innovations and methodological directions in MCC.

The EAC focuses on issues related to the analytical products and strategy used as inputs to compact and threshold program development and decision making, on learning from MCC experience about program effectiveness

and impact, and to reflect on the broader global development trends and context of MCC's work. The EAC provides advice, recommendations, and guidance from experts in academia and the international development community on the design and implementation of programs in a structured and integrated manner.

The EAC is seeking members from a range of academic organizations, independent think tanks, and international development agencies to add to its current membership. Members will be chosen to represent a diversity of expertise, background and geographic experience.

Additional information about MCC and its portfolio can be found at *www.mcc.gov.*

**DATES:** Nominations for EAC members must be received on or before 5 p.m. EDT on August 2, 2019. Further information about the nomination process is included below.

MCC plans to host the next EAC meeting in late 2019. The Council will meet at least one time per year in Washington, DC or via video/teleconferencing.

**ADDRESSES:** All nomination materials or requests for additional information should be emailed to MCC's Economic Advisory Council Designated Federal Officer, Brian Epley at *MCCEACouncil@mcc.gov* or mailed to Millennium Challenge Corporation, Attn: Brian Epley, 1099 14th St. NW, Suite 700, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Brian Epley, 202.772.6515, *MCCEACouncil@mcc.gov* or visit *www.mcc.gov/about/org-unit/economic-advisory-council.*

**SUPPLEMENTARY INFORMATION:** The EAC shall consist of not more than twenty (20) individuals who are recognized experts in their field, academics, innovators and thought leaders representing (without limitation) academic organizations, independent think tanks, international development agencies, multilateral and regional development financial institutions, and foundations. Efforts will be made to include expertise from developing countries, within the resource constraints of the MCC to support logistic costs.

Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the EAC, nominators should submit the following information:

- Name, title, organization and relevant contact information (including phone and email address) of the individual under consideration;
- A letter containing a brief biography for the nominee and description why the nominee should be considered for membership;
- CV including professional and academic credentials;

Please do not send company, or organization brochures or any other information. Materials submitted should total two pages or less, excluding CV. Should more information be needed, MCC staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources.

The EAC provides advice to MCC on issues related to growth and development in low and middle income countries including:

1. New perspectives on economic development
2. Innovative approaches to growth analytics
3. Innovations in program and project evaluation
4. Applied microeconomics and cost-benefit analytics
5. Poverty and income dynamics
6. Social development and the economics of gender
7. Other innovations in the field of development economics and evaluation

All members of the EAC will be independent of the agency, representing the views and interests of their respective industry or areas of expertise, and not as Special Government Employees. All members shall serve without compensation. The duties of the EAC are solely advisory and any determinations to be made or actions to be taken on the basis of EAC advice shall be made or taken by appropriate officers of MCC.

Nominees selected for appointment to the EAC will be notified by return email and receive a letter of appointment. A selection team will review the nomination packages. Members will be determined by the Vice President for Policy and Evaluation based on criteria including:

(1) Professional experience, and knowledge; (2) academic field and expertise; (3) experience within regions in which MCC works; (4) contribution of diverse regional or technical professional perspectives, and (5) availability and willingness to serve.

In the selection of members for the EAC, MCC will seek to ensure a balanced representation and consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the EAC.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation.

Dated: July 9, 2019.

**Jeanne M. Hauch,**

*VP/General Counsel and Corporate Secretary.*

[FR Doc. 2019–15209 Filed 7–16–19; 8:45 am]

**BILLING CODE 9211–03–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 19–140]**

### Reporting Requirements Regarding Findings of Harassment, Sexual Harassment, Other Forms of Harassment, or Sexual Assault

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Request for public comment; Correction.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) is correcting a document that appeared in the **Federal Register** on July 10, 2019, concerning request for public comment on the Agency's proposed implementation of new reporting requirements regarding harassment among recipients of NASA financial assistance. The document that published was an incorrect version. This document is the correct version.

**DATES:** Comments must be received by August 16, 2019.

**ADDRESSES:** Comments should be addressed to National Space and Aeronautics Administration Headquarters, 300 E Street SW, Rm. 6O87, Washington, DC 20546 or sent by email to *civilrightsinfo@nasa.gov;* Phone Number: 202–358–2180, FAX Number: 202–358–3336. We encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include ''*Reporting Requirement Regarding Findings of Sexual Harassment, other Forms of Harassment, or Sexual Assault*'' in the subject line of the email message; please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and email address in your message.

**FOR FURTHER INFORMATION CONTACT:** Richard N. Reback, email: *civilrightsinfo@nasa.gov;* telephone (202)358–2180.

**SUPPLEMENTARY INFORMATION:**

## Correction

In the **Federal Register** of July 10, 2019, in FR Doc. 2019–14653, on page 32964 in the first column, correct the **SUMMARY** and **SUPPLEMENTAY INFORMATION** to read as follows:

**SUMMARY:** The many hundreds of U.S. institutions of higher education and other organizations that receive NASA funds are responsible for fully investigating complaints and for compliance with federal non-discrimination laws, regulations, and executive orders. The implementation of new reporting requirements is necessary as NASA seeks to help ensure research environments to which the Agency provides funding are free from sexual harassment, other forms of harassment, and sexual assault. Additionally, NASA is taking this action to bolster our policies, guidelines, and communications. The intended effect of this action is, first, to better ensure that organizations funded by NASA clearly understand expectations and requirements. In addition, NASA seeks to ensure that recipients of grants and cooperative agreements respond promptly and appropriately to instances of sexual harassment, other forms of harassment, and sexual assault.

**SUPPLEMENTARY INFORMATION:** As a U.S. funding Agency of scientific research and development, and the primary funding Agency for aeronautics and space research and technology, NASA is committed to promoting safe, productive research and education environments for current and future scientists and engineers. We consider the Principal Investigator (PI) and any Co-Investigator(s) (Co-I) identified on a NASA award and all personnel supported by a NASA award must not engage in harassing behavior during the award period of performance whether at the recipient's institution, on-line, or outside the organization, such as at field sites or facilities, or during conferences and workshops.

Upon implementation, the new term and condition will require recipient organizations to report to NASA any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding a NASA funded PI or Co-I. The new term and condition will also require the recipient to report to NASA if the PI or Co-I is placed on administrative leave or if the recipient has imposed any administrative action on the PI or Co-I, or any determination or an investigation of an alleged violation of the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. Finally, the award term and condition specifies the procedures that will be followed by NASA upon receipt of a report.

The full text of the new term and condition is provided below:

### Reporting Requirements Regarding Sexual Harassment, Other Forms of Harassment, or Sexual Assault

(a) The Principal Investigator (PI) and any Co-Investigator(s) (Co-I) identified on an NASA award are in a position of trust. These individuals must comport themselves in a responsible and accountable manner during the award period of performance, whether at the recipient's institution, on-line, or at locales such as field sites, facilities, or conferences/workshops. Above all, NASA wishes to assure the safety, integrity, and excellence of the programs and activities it funds.

(b) For purposes of this term and condition, the following definitions apply:

1. *Administrative Leave/ Administrative Action:* Any temporary/ interim suspension or permanent removal of the PI or Co-I, or any administrative action imposed on the PI or Co-I by the recipient under organizational policies or codes of conduct, statutes, regulations, or executive orders, relating to activities, including but not limited to the following: teaching, advising, mentoring, research, management/ administrative duties, or presence on campus.

2. *Finding/Determination:* The final disposition of a matter involving sexual harassment or other form of harassment under organizational policies and processes, to include the exhaustion of permissible appeals exercised by the PI or Co-I, or a conviction of a sexual offense in a criminal court of law.

3. *Other Forms of Harassment:* Non-gender or non-sex-based harassment of individuals protected under federal civil rights laws, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.

4. *Sexual harassment:* May include but is not limited to gender or sex-based harassment, unwelcome sexual attention, sexual coercion, or creating a hostile environment, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.

(c) *The recipient is required to report to NASA:* (1) Any finding/determination regarding the PI or any Co-I that demonstrates a violation of the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; and/or (2) if the PI or any Co-I is placed on administrative leave or if any administrative action has been imposed on the PI or any Co-I by the recipient relating to any finding/determination or an investigation of an alleged violation of the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.[1] Such reporting must be submitted by the Authorized Organizational Representative (AOR) to NASA's Office of Diversity and Equal Opportunity at *civilrightsinfo@nasa.gov* within seven business days from the date of the finding/determination, or the date of the placement of a PI or Co-I by the recipient on administrative leave or the imposition of an administrative action.[2]

(d) Recipient agrees to insert the substance of this term and condition in any subaward/subcontract involving a co-investigator. Recipient will be responsible for ensuring that all reports, including those related to co-investigators, comply with this term and condition.

(e) Each report must include the following information:

- NASA Award Number;
- Name of PI or Co-I being reported; [1]

*Type of Report:* Select one of the following:

- Finding/Determination that the reported individual has been found to have violated the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; *or*
- Placement by the recipient of the reported individual on administrative leave or the imposition of any administrative action on the PI or any Co-I by the recipient relating to any finding/determination, or an investigation of an alleged violation of the recipient's policies or codes of

[1] Recipient findings/determinations and placement of a PI or Co-I on administrative leave or the imposition of an administrative action must be conducted in accordance with organizational policies and processes. They also must be conducted in accordance with federal laws, regulations, and executive orders.

[2] Such report must be provided regardless of whether the behavior leading to the finding/ determination, or placement on administrative leave, or the imposition of an administrative action occurred while the PI or Co-I was carrying out award activities.

[1] Only the identification of the PI or Co-I is required. Personally identifiable information regarding any complainants or other individuals involved in the matter must not be included in the report.

conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

The recipient must also provide:

• A description of the finding/determination and action(s) taken, if any; *and/or*

• The reason(s) for, and conditions of placement of the PI or any Co-I on administrative action or administrative leave.

The recipient, at any time, may propose a substitute investigator if it determines the PI or any Co-I may not be able to carry out the funded project or activity and/or abide by the award terms and conditions.

In reviewing the report, NASA will consider, at a minimum, the following factors:

a. The safety and security of personnel supported by the NASA award;

b. The overall impact to the NASA-funded activity;

c. The continued advancement of taxpayer-funded investments in science and scientists; and

d. Whether the recipient has taken appropriate action(s) to ensure the continuity of science and that continued progress under the funded project can be made.

(f) Upon receipt and review of the information provided in the report, NASA will consult with the AOR, or designee. Based on the results of this review and consultation, the Agency may, if necessary and in accordance with 2 CFR 200.338, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any Co-I, reduce the award funding amount, or where neither of those previous options is available or adequate, to suspend or terminate the award. Other personnel supported by a NASA award must likewise remain in full compliance with the recipient's policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. With regard to any personnel not in compliance, the recipient must make appropriate arrangements to ensure the safety and security of other award personnel and the continued progress of the funded project. Notification of these actions is not required under this term and condition.

*End of Proposed Term and Condition*

*Implementation:* Upon receipt and resolution of all comments, it is NASA's intention to implement the new term through revision of the NASA Agency Specific Requirements to the Research Terms and Conditions, the Grant General Conditions, and the Cooperative Agreement—Financial and Administrative Terms and Conditions. These revised terms and conditions will become effective thirty days from the date of publication in the **Federal Register** and will be available in the NASA Grants and Cooperative Agreement Manual (GCAM).

The new term and condition will be applied to all new NASA awards and funding amendments to existing awards made on or after the effective date. This new reporting requirement will apply to all findings/determinations that occur on or after the effective date of the terms and conditions. With regard to notification of placement on administrative leave, the recipient must notify NASA within seven business days from the date the recipient determines that placement on administrative leave is necessary.

Recipients are strongly encouraged to conduct a thorough review of the term and condition to determine whether the new reporting requirements necessitate any changes to the institution's policies and procedures. The new term and condition will be effective for any new award, or funding amendment to an existing award, made on or after the effective date. For these purposes, this means that any finding/determination, placement on administrative leave or the imposition of any administrative action by the institution made on or after the start date of an award or funding amendment subject to the new term will invoke the new reporting requirements.

**Cheryl E. Parker,**

*NASA Federal Register Liaison Officer.*

[FR Doc. 2019–15088 Filed 7–16–19; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL CAPITAL PLANNING COMMISSION

### Notice of Public Comment Period and Public Meetings on the Federal Workplace Element of the Comprehensive Plan for the National Capital

**AGENCY:** National Capital Planning Commission.

**ACTION:** Notice of 60-day public comment period and public meetings.

**SUMMARY:** The National Capital Planning Commission (NCPC) has released a draft of the Federal Workplace Element of the Comprehensive Plan for the National Capital: Federal Elements for public review. The element establishes policies to emphasize Washington as the seat of the federal government; efficiently plan and locate federal workplaces so they contribute to the National Capital Region's economic well-being; promote resource protection; and provide sustainable and healthy work environments for its workforce. The draft is available online for review at *https://www.ncpc.gov/initiatives/workplace.*

**DATES:** The public comment period closes September 16, 2019.

*Public Meetings:* NCPC will host two open house events for the public to learn more about the Element. The first open house will be on August 6, 2019 from 6:00 p.m. to 7:30 p.m. The second open house will be August 7, 2019 from 10:30 a.m. to 12:00 p.m. The meetings will be held at NCPC (same address as that to which written comments may be addressed below).

**ADDRESSES:** Written public comments on the draft may be submitted by either method:

1. *U.S. mail, courier, or hand deliver:* Federal Workplace Public Comment, National Capital Planning Commission, 401 9th Street NW, Suite 500N, Washington, DC 20004.

2. *Electronically: https://www.ncpc.gov/initiatives/workplace.*

**FOR FURTHER INFORMATION CONTACT:** Angela Dupont at (202) 482–7232 or *info@ncpc.gov.*

**Authority:** 40 U.S.C. 8721(e)(2).

Dated: July 12, 2019.

**Anne R. Schuyler,**

*General Counsel.*

[FR Doc. 2019–15172 Filed 7–16–19; 8:45 am]

**BILLING CODE 7502–02–P**

## PEACE CORPS

### Information Collection Request; Submission for OMB Review

**AGENCY:** Peace Corps.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Submit comments on or before August 16, 2019.

**ADDRESSES:** Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

**FOR FURTHER INFORMATION CONTACT:** Virginia Burke at Peace Corps address above or by telephone at 202–692–1887.

**SUPPLEMENTARY INFORMATION:**

*Title:* Peace Corps Volunteer Application Form.

*OMB Control Number:* 0420–0005.

*Type of Request:* Renewal.

*Affected Public:* Individuals.

*Respondents Obligation to Reply:* Voluntary.

*Burden to the Public:*

*Estimated Burden (hours) of the Collection of Information:*

a. *Number of respondents:* 23,000.

b. *Frequency of response:* One time.

c. *Completion time:* 60 minutes.

d. *Annual burden hours:* 23,000 hours.

*General Description of Collection:* The information collected by the Volunteer Application is used by the Peace Corps to collect essential information from individual applicants, including technical and language skills, and availability for Peace Corps service. The information is used by the Peace Corps Office of VRS in its assessment of an individual's qualifications to serve as a Peace Corps Volunteer, including practical and cross-cultural experience, maturity, motivation and commitment. Selection for Peace Corps service is based on that assessment.

*Request for Comment:* Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on July 12, 2019.

**Virginia Burke,**

*FOIA/Privacy Act Officer, Management.*

[FR Doc. 2019–15213 Filed 7–16–19; 8:45 am]

BILLING CODE 6051–01–P

## POSTAL SERVICE

### Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 9, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 106 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–160, CP2019–180.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019–15199 Filed 7–16–19; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 9, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 536 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–161, CP2019–181.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019–15200 Filed 7–16–19; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 107 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–164, CP2019–184.

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019–15210 Filed 7–16–19; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2019,

it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 537 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–163, CP2019–183.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019–15202 Filed 7–16–19; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* July 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 78 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–162, CP2019–182.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019–15201 Filed 7–16–19; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86360; File No. SR–NYSE–2019–39]**

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Adopt Transition Pricing To Support the Introduction of Ports That Connect to the Exchange Using Pillar Technology

July 11, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 3, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to adopt transition pricing to support the introduction of ports that connect to the Exchange using Pillar technology. The Exchange proposes to implement these changes to its Price List effective July 3, 2019. 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 to adopt transition pricing to support the introduction of ports that connect to the Exchange using Pillar technology. With the proposed transition fee pricing, the Exchange would (1) adopt a cap on monthly fees for the use of certain ports connecting to the Exchange for the billing months July 2019 through March 2020; (2) adopt a Decommission Extension Fee applicable for the billing months April 2020 through September 2020 for legacy port connections; and (3) prorate the monthly fee for certain ports activated after July 1, 2019, effective April 1, 2020. Without this proposed rule change, the Exchange would be required to charge a member organization for all of its ports—both legacy ports and the new ports using Pillar technology—during the transition period, which could significantly increase costs to member organizations.

This filing does not to propose to increase the rates charged for ports. Rather, the purpose of this filing is to incent the transition from older to newer and more efficient Pillar technology with no fee increase. Moreover, the Exchange proposes to do so in essentially the same way that the Exchange's affiliate, NYSE Arca, Inc. (''NYSE Arca''), did in 2017 [4] by, first, providing a cap on how much member organizations would be charged for ports for a nine-month period so that they would not incur additional charges during the transition to Pillar communication protocols and, second, providing that the fees for the few firms that do not transition during the nine-month period offset the Exchange's continuing costs of supporting legacy ports.

The Exchange proposes to implement these changes to its Price List effective July 3, 2019.[5]

Overview of the Proposed Fee Changes

Member organizations enter orders and order instructions and receive information from the Exchange by establishing a connection to a gateway that uses communication protocols that map to the order types and modifiers described in Exchange rules. These gateway connections, also known as logical port connections, are referred to as ''ports'' on the Exchange's Price List.

The Exchange currently makes available ports that provide this connectivity to the Exchange's trading systems (*i.e.,* ports for entry of orders and/or quotes (''order/quote entry ports'')) and charges $550 per port per month for such ports.[6] Designated

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 81901 (October 19, 2017), 82 FR 49426 (SR–NYSArca–2017–121) (adopting decommission extension fee for initial three months of March–May 2018); Securities Exchange Act Release No. 83410 (June 12, 2018), 83 FR 28300 (SR–NYSArca–2018–42) (extending decommission extension fee for the additional three months of June–September 2018).

[5] The Exchange originally filed to amend the Schedule of Fees and Rebates on June 28, 2019 (SR–NYS–2019–36). SR–NYSE–2019–36 was subsequently withdrawn and replaced by this filing.

[6] All ports on the Exchange currently connect via a Common Customer Gateway (''CCG'') that accesses its equity trading systems. *See, e.g.,* Securities Exchange Act Release No. 64542 (May 25, 2011), 76 FR 31659 (June 1, 2011) (SR–NYSE–2011–13).

Market Makers (''DMMs'') connect via ''DMM Gateways'' and are not charged for the first 12 ports per month that connect to the Exchange.[7] The Exchange also currently makes ports available for drop copies and charges $550 per port per month,[8] except that DMMs are not charged for drop copy ports that connect to the Exchange via the DMM Gateway. Fees for order/quote entry ports and drop copy ports have remained relatively stable over time and have not increased since 2015, and not since 2017 for DMMs.[9]

The Exchange is undergoing a multi-phase transition to the Pillar trading platform that began in April 2018, when the Exchange introduced trading of UTP Securities on the Pillar trading platform.[10] Because Exchange-listed securities are not yet on the Pillar trading platform, all ports currently communicate with the Exchange using CCG (''Phase I ports''), regardless of whether trading UTP securities or Exchange-listed securities.

The Exchange next plans to transition Exchange-listed securities to the Pillar trading platform.[11] In anticipation of the transition of Exchange-listed securities to the Pillar trading platform, the Exchange will be introducing new technology to support how all member organizations, including DMMs, will communicate with the Exchange when trading on the Pillar trading platform. The Exchange plans to make available ports using Pillar gateways (''Phase II ports'') beginning July 1, 2019, at which time such ports will be available for trading UTP Securities on the Exchange. The Phase II ports will also be available for trading Exchange-listed securities once they transition to the Pillar trading platform. Once Exchange-listed securities transition to Pillar, DMMs will communicate with the Exchange using Phase II ports and will no longer use DMM Gateways.[12]

As the experience of the Exchange's affiliates that trade on the Pillar trading platform and use the Phase II ports shows, the Phase II ports constitute a significant performance improvement over current ports, with an expected reduction in average latency up to 80% over Phase I ports.[13] The Phase II ports will provide member organizations with a low-latency connection that will provide a more deterministic trading experience on the Exchange. Because of the latency improvements of the Phase II ports and because Exchange member organizations that are members of one or more of the Affiliated Exchanges already use Phase II ports, the Exchange expects its member organizations to transition expeditiously to using Phase II ports. However, because of the technology changes that a member organization would need to make to connect to Phase II ports, the Exchange anticipates that there will be a period of time before all member organization will be fully transitioned to the Phase II ports. During that transition period, a member organization may choose to maintain its Phase I ports while it replaces them with Phase II ports. Accordingly, during this implementation, there will be a period when both the Phase I and Phase II ports will be available to member organizations.[14]

In connection with this transition, the Exchange proposes transition pricing that has two distinct phases.

- The first phase would be a transition period during which the fees charged for both order/quote entry and drop copy ports would, with certain exceptions, be capped at, and thus not charged for more than, the total number of both order/quote entry and drop copy ports that the member organization has activated as of its June 2019 invoice. The first phase would last nine months, from July 2019 through March 2020, during which the Exchange will be making both the Phase I and Phase II ports available to member organizations.
- The second phase would encompass a six-month decommission period between April 2020 and September 2020 during which the Exchange's proposed pricing would provide increased costs to member organizations that did not transition in the nine-month transition period. Effective April 1, 2020, the Exchange would also prorate the monthly fee for certain ports activated on or after July 1, 2019.

Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [16] Indeed, equity trading is currently dispersed across 13 exchanges,[17] 31 alternative trading systems,[18] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or

[7] *See* Securities Exchange Act Release No. 68229 (November 14, 2012), 77 FR 69688 (November 20, 2012) (SR–NYSE–2012–60) (Notice).

[8] Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

[9] *See* Securities Exchange Act Release No. 76072 (October 5, 2015), 80 FR 61258 (October 9, 2015) (SR–NYSE–2015–43) (Notice); Securities Exchange Act Release No. 79748 (January 6, 2017), 82 FR 3828 (January 12, 2017) (SR–NYSE–2016–93) (Notice).

[10] The term ''UTP Security'' is defined under Rule 1.1(aa) to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. The Exchange began trading UTP Securities on the Pillar trading platform on April 9, 2018. *See also* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR–NYSE–2017–36) (Order approving trading rules to support trading of UTP Securities on the Pillar trading platform).

[11] The Exchange has announced that, subject to rule approvals, it will begin transitioning Exchange-listed securities to Pillar on August 5, 2019, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/Revised_Pillar_Migration_Timeline.pdf. See also* Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR–NYSE–2019–05) (Order approving rules to support the transition of Exchange-listed securities to Pillar).

[12] The Exchange accordingly proposes to refer generally to DMM ports that connect to the Exchange by deleting the phrase ''via the DMM Gateway'' in the sections of the Price List describing order/quote entry ports and drop copy ports.

[13] Latency statistics for the Pillar gateways are available at *https://www.nyse.com/pillar.* These gateways are currently available on NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'') (collectively, the ''Affiliated Exchanges'').

[14] The Exchange's affiliate NYSE Arca similarly offered a parallel period when both Pillar phase I and Pillar phase II protocols were available to its members. *See* Securities Exchange Act Release No. 79588 (December 23, 2016), 81 FR 96534 (December 30, 2016) (SR–NYSEArca–2016–170) (Notice of filing and immediate effectiveness of proposed rule change).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (''Regulation NMS'').

[16] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[17] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[18] *See* FINRA ATS Transparency Data (June 3, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

including auction volume).[19] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing this transition pricing in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with an orderly transition to upgraded technology without needing to incur any additional costs. If a member organization is unable to complete this transition within the nine-month period, the pricing is designed to offset the Exchange's continuing costs of supporting the Phase I ports.

Proposed Rule Change

As noted above, the Exchange proposes to introduce transition pricing designed to provide member organizations an extended transition period to connect to Phase II ports without subjecting them to fee increases as they transition and once that transition period ends, to prorate fees for order/quote entry and drop copy ports, as follows.

The Exchange proposes to set forth the proposed ''Pillar Port Transition Fee Pricing'' as a separate entry on its Price List, to be added after the entry for Ports for drop copies. As proposed, the Pillar Port Transition Fee Pricing would be applicable to both order/quote entry and drop copy ports. Accordingly, all references to ports in this proposed pricing refer to both types of ports.

Proposed Transition Period Pricing

During the billing months of July 2019 through March 2020 (the ''Transition Period''), the Exchange proposes that the total number of ports charged per member organization would be capped at the total number of such ports that the member organization has activated as of the June 2019 invoice, which is the last full month prior to the introduction of the new gateways (the ''Transition Cap'').

As further proposed, the Transition Cap pricing would be available until the earlier of (1) the end of the Transition Period, *i.e.,* March 2020, or (2) the billing month during which a member organization has fully transitioned to using only ports that communicate using Pillar phase II protocols. For example, if in June 2019, Firm A has 10 ports, that firm's Transition Cap would be 10 ports. At any time during the Transition Cap period, if Firm A keeps those 10 Phase I ports and adds 10 Phase II ports, Firm A would only be charged for 10 ports. If, during the Transition Period, Firm A no longer had any Phase I ports and had eight Phase II ports, it would no longer be eligible for the Transition Cap pricing and would be charged for those eight ports.

As an exception to the cap, the Exchange proposes that if, during the Transition Period, a member organization increases the number of Phase I ports above the Transition Cap, those ports would be charged at the current rates for order/quote entry ports and drop copy ports. The purpose of the Transition Cap is to facilitate the transition to Phase II ports. If this were not a transition period, and a member organization increased its number of ports, it would be charged accordingly. The Exchange therefore believes that if a member organization increases the number of Phase I ports, *i.e.,* is not transitioning to the new technology, it should be charged for those additional ports no differently than during periods when the Transition Cap pricing is not in effect.

The Exchange further proposes that if, during the Transition Period, a member organization has a total number of ports below the Transition Cap, the Exchange would charge a member organization for their actual number of ports. For example, if during the Transition Period, Firm A with a Transition Cap of 10 ports had four Phase I ports and five Phase II ports that firm would be charged for only nine ports, which is under its Transition Cap.

As proposed, the charge per port (order/quote entry and drop copy) will not be changing, and would remain at $550 per port per month for all ports. DMMs would continue not to be charged for drop copy ports and for their first 12 order/quote entry ports per month that connect to the Exchange and then $550 per order/quote entry port that connects to the Exchange per month thereafter.[20]

Application and Impact of Transition Period Pricing

The purpose of Transition Period Pricing is to cap port fees to allow member organizations sufficient time to implement technology changes necessary to connect to the Exchange using the Phase II ports without incurring any additional Exchange fees. Based on the experience of the Exchange's affiliate NYSE Arca, the Exchange believes that nine months provides sufficient time for all member organizations, regardless of size, to be able to complete the necessary changes. The Exchange proposes to extend the Transition Pricing through March 2020 so that if a member organization is unable to complete its changes in 2019, it would have sufficient time in 2020 to plan for and implement the changes.

The proposed cap would have the effect of waiving the port fees during the Transition Period of any new Phase II ports that a member organization may use. Without this proposed rule change, the Exchange would be required to charge a member organization for all of its ports—both Phase I and Phase II ports—during the transition period, which could significantly increase costs to member organizations.

Proposed Decommission Extension Fee

The Exchange proposes to amend the Price List to adopt a Decommission Extension Fee that would apply during the billing months of April 2020 through September 2020 (the ''Decommission Period''). As proposed, during the Decommission Period, in addition to the current port fees, member organizations would be charged a Decommission Extension Fee of $500 per port per month, increasing by $500 per port for each month for any ports that communicate using Pillar phase I protocols. The proposed Decommission Extension Fee would apply only to member organizations that use Phase I ports during the Decommission Period. The Exchange proposes that ports using Pillar phase I protocols would no longer be available beginning October 1, 2020.

For example, in June 2019, Firm A has 10 Phase I ports and a Transition Cap of 10 ports. By April 2020, the first month of the Decommission Period, Firm A still has four Phase I ports. In this scenario, Firm A would be charged the standard port rate for the four Phase I ports plus $500 per port for the Decommission Extension Fee.

[19] *See* Cboe Global Markets U.S. Equities Market Volume Summary (June 27, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[20] *See* note 12, *supra.*

If Firm A has the same four Phase I ports in May 2020, Firm A would be charged the standard port rate for the four Phase I ports plus $1,000 per port for the Decommission Extension Fee.

If Firm A retains the four Phase I ports until September 2020, the final month of the Decommission Extension Pricing, Firm A would be charged the standard port rate for the four Phase I ports plus $3,000 per port for the Decommission Extension Fee.

Application and Impact of the Proposed Decommission Extension Fee

As noted above, the Exchange believes that a nine-month Transition Period is sufficient time for member organizations to fully transition to Phase II ports and eliminate their use of Phase I ports. To the extent that member organizations do not complete the transition during the Transition Period, the Exchange will offer member organizations the ability to choose to continue using Phase I ports until September 2020. To cover the costs associated with maintaining and supporting both Phase I ports and Phase II ports beyond the nine-month Transition Period, the Exchange proposes that such costs would be paid by the expected very small number of member organizations that would need longer to transition than the nine-month Transition Period. Specifically, to support the continued availability of the Phase I ports, the Exchange would have to maintain additional hardware and devote technology resources to maintain and operate those ports, which is a cost to the Exchange. While these costs cannot be specifically quantified and it is unknown how many (if any) member organizations would need to continue to access the Exchange using Phase I ports after the Transition Period, the Exchange believes that the proposed Decommission Extension Fee would, in part, cover the costs associated with continuing to support the Phase I port infrastructure for use by a dwindling number of member organizations.

The proposed Decommission Extension Fee is not novel. As noted previously, the Exchange's affiliate NYSE Arca previously adopted a decommission extension fee and was successful in using the fee to incent its members to fully transition to the phase II ports within a seven-month transition period.[21] Specifically, NYSE Arca introduced its Phase II ports in August 2017. Beginning March 1, 2018, NYSE Arca began charging a decommission extension fee. Accordingly, NYSE Arca members had seven months to transition before the decommission extension fee was to be charged. During March 2018, the first month that NYSE Arca charged a decommission extension fee, 29 members of the 139 members that had Phase I ports prior August 2017, or 21% of the total, were subject to the decommission extension fee. In other words, 79% of NYSE Arca members had fully transitioned to the Phase II ports before NYSE Arca began charging its decommission extension fee. Sixteen of those firms were relatively large firms with at least ten ports that choose to absorb the cost rather than to transition to Phase II ports within the seven-month transition period.

By September 2018, the last month that NYSE Arca charged a decommission extension fee, only five NYSE Arca members out of 139 (4% of the total), were subject to the decommission extension fee. Of those five members, three were relatively large firms with at least 10 ports.

Based on NYSE Arca's experience, the Exchange believes that a similarly small number of larger firms will be subject to the proposed Decommission Extension Fee because they choose not to fully move to Phase II ports during the Transition Period. The Exchange notes that it proposes a Transition Period of nine months, which will provide firms two more months to transition as compared to NYSE Arca. The Exchange believes that these additional two months will provide more than sufficient time for the transition and that fewer member organizations will choose to pay the proposed Decommission Fee because they do not transition within the nine months, as compared to the number of firms that paid the NYSE Arca's decommission extension fee.

Proration of Port Fees

Effective April 1, 2020, the fee for order/quote entry and drop copy ports activated after July 1, 2019, will be prorated to the number of trading days that a port is eligible for production trading with the Exchange, including any scheduled early closing days.[22]

Application and Impact of Proration of Port Fees

The purpose of prorating the fees for order/quote entry and drop copy ports activated after July 1, 2019 is to charge member organizations port fees only for the days in which the member organization's port is connected to the Exchange.

For example, in June 2019, Firm A has 10 Phase I ports and a Pillar Transition Cap of 10 ports. If, in the first month after the Transition Cap, April 2020, Firm A has 10 Phase II ports and adds 2 Phase II ports on April 15, 2020, Firm A would be charged the standard port rate for the 10 Phase II ports, plus a prorated rate for the 2 additional Phase II ports added mid-month. The prorated rate would be calculated by dividing the number of trading days that a port is eligible for production trading with the Exchange by the total number of trading days in that month, then multiplying by the standard port rate.

The Exchange does not propose to introduce such pro-rated pricing until after the Transition Period because during the Transition Period, member organizations will be subject to the Transition Cap pricing, which will cap the total port costs as member organizations add Phase II ports and drop Phase I ports.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[24] 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 Proposed Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its

[21] *See* note 4, *supra*.

[22] Cboe BZX prorates port fees for the first month of service. *See* Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4) & (5).

broader forms that are most important to investors and listed companies.'' [25]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [26] Indeed, equity trading is currently dispersed across 13 exchanges,[27] 31 alternative trading systems,[28] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).[29] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

If a particular exchange charges excessive fees for connectivity, impacted members and non-members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Given this competitive environment, the proposal represents a reasonable method of providing member organizations with a means to make an orderly transition to upgraded technology without increasing their costs. As noted, the purpose of this filing is not to change the rates charged for ports. Rather the proposal would provide a cap on how much member organizations would be charged for ports during a nine-month period so that they would not incur additional charges during the transition to Pillar communication protocols. Accordingly, the Exchange believes that the proposal is a fair and reasonable way for member organizations to transition to upgraded technology without needing to incur any additional Exchange fees. If a member organization is unable to complete this transition within the nine-month period, the pricing is designed so that only those few member organizations that may not transition within the nine-month period pay for the Exchange to continue to support the Phase I ports.

Transition Period Pricing

The Exchange believes that the proposed Transition Cap for the billing months of July 2019 through March 2020, which will be available until the earlier of the end of the Transition Period or the billing month during which a member organization has fully transitioned to using only ports that communicate using Pillar phase II protocols, is reasonable.

The proposed change is designed to permit member organizations an extended transition period to adjust to the new gateways. The Exchange believes that a nine-month transition period is reasonable and provides sufficient notice of the changeover. The proposed pricing is designed to provide all member organizations with no fee increases while they transition, and provides certainty for when this transition pricing ends so that firms can plan when and how to fully transition to the new gateways. Without such Transition Period pricing, member organizations costs would increase because, without this proposed rule change, the Exchange would be required to charge a member organization for all of its ports—both Phase I and Phase II ports—during the transition period, which could significantly increase costs to member organizations. In this regard, absent similar transition pricing, the Exchange's affiliate NYSE Arca's transition to Phase II protocols would have increased the average firms' port fees by 67.5% in the first month of the migration. Thus, the proposed cap balances the Exchange's desire to improve technology without increasing Exchange fees for member organizations.

Decommission Extension Fee

The Exchange believes that the proposed Decommission Extension Fee for member organizations that choose to continue to connect to the Exchange through the use of Phase I ports after the Transition Period, which is scheduled to end at the close of trading on September 30, 2020, is also reasonable.

As noted above, the Exchange will incur ongoing costs in maintaining Phase I ports during the Decommission Period, including costs to maintain servers and their physical location, monitoring order activity, and other support, with no real benefit. The Exchange believes that it is reasonable to require member organizations to pay the proposed Decommission Extension Fee because a small number of member organizations would need longer to transition than the nine-month Transition Period. Due to the additional costs that the Exchange would continue incur to support Phase I ports after the Transition Period, the Exchange believes that it is fair and reasonable to charge those member organizations that choose not to fully transition during the Transition Period, fees to defray the costs of such support during the Decommission Period because it is expected that the number of member organizations that do not transition to Phase II ports by March 31, 2020 will be small. Further, the Exchange believes that it is reasonable for the Decommission Extension Fee to increase for each month for any ports that communicate using Pillar phase I protocols once the Decommission Period begins because the number of member organizations not fully migrated from legacy technology to the Phase II ports will be expected to diminish over time. Member organizations can avoid or mitigate the impact of the proposed increase of the Decommission Extension Fee by migrating to the new ports before or earlier in the Decommission Period.

Proration of Port Fees

The Exchange believes that the proposal to prorate the monthly fee for ports activated on or after July 1, 2019 to the number of trading days in a billing month the port is connected to the Exchange is fair and reasonable because it would allow all Exchange participants to subscribe to the most effective connectivity according to their trading requirements and as a result will only be assessed fees for the connectivity they utilize during any trading month beginning April 1, 2020

[25] *See* Regulation NMS, 70 FR at 37499.

[26] *See* Transaction Fee Pilot, 84 FR at 5253.

[27] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[28] *See* FINRA ATS Transparency Data (June 3, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[29] *See* Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

for ports activated after July 1, 2019.[30] The Exchange does not propose to introduce pro-rated pricing until after the Transition Period because during the Transition Period, member organizations will be subject to the Transition Cap pricing, which will cap the total port costs as member organizations add Phase II ports and drop Phase I ports.

The Exchange believes the proposed proration of fees for ports activated after July 1, 2019 would serve only to charge member organizations port fees for the actual days a member organization's ports are connected to the Exchange. The Exchange further notes that billing for ports activated before July 1, 2019 will continue to be based on the number of ports on the third business day prior to the end of the month consistent with the Exchange's billing policy, and so firms that cancel ports before the third business day prior to the end of the month will not be billed for those ports.

Moreover, as noted above, Cboe BZX currently charges new ports on a prorated basis for the first month of service. The Exchange notes, however, that fees for ports activated before July 1, 2019 would not be pro-rated. The Exchange believes it is reasonable to charge flat fees for ports activated before July 1, 2019 as such ports are expected to be phased out within a short period of time after the introduction of the Phase II ports and would be subject to the proposed Decommission Fee, described above.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the port fees, which will remain at the current level for all market participants. Rather, the proposal would provide an additional fee for those few member organizations that choose not to transition to Phase II ports during the Transition Period and to adopt a fee cap and pro-rata billing for ports without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations and other market participants would be charged the same rates.

Specifically, the Transition Cap constitutes an equitable allocation of fees because it would be applied to all similarly situated member organizations, who would be eligible for the Transition Cap in equal measure and would thereby all be eligible to not be charged for more than the total number of both order/quote entry and drop copy ports that the member organization has activated as of its June 2019 invoice. The Exchange further believes that the proposal is an equitable allocation of fees because the Exchange will be making both the Phase I and Phase II ports available to all member organizations during the Transition Period on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees.

Similarly, the proposed Decommission Extension Fee would apply equally to all member organizations that choose to connect to the Exchange through the use of Phase I ports during the Decommission Period. Moreover, as noted above, the experience of the Exchange's affiliate NYSE Arca with a decommission extension fee suggests that most member organizations would complete the transition before the decommission extension fee goes into effect, and that many of the firms that were subject to the NYSE Arca fee were larger firms that choose to absorb the additional cost. The Exchange proposes a longer transition period than was available on NYSE Arca, which the Exchange expects should be more than sufficient for all member organizations, regardless of their size, to be able to transition Phase II ports before the proposed Decommission Fee goes into effect.

The proposal to pro-rate port fees is also equitable since it would also apply equally to all member organizations that connect to the Exchange, who would equally receive the benefit of being charged only for the connectivity utilized during any trading month beginning April 1, 2020. As noted above, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during April 1, 2020 and any subsequent months, the Exchange believes it is fair and equitable to continue to charge flat fees for such ports until such time that connection to the Exchange through the use of Phase I ports is no longer available beginning October 1, 2020. Moreover, as noted above, Cboe BZX currently charges new ports on a prorated basis for the first month of service. The Exchange notes, however, that fees for ports activated before July 1, 2019 would not be pro-rated (consistent with current practice). The Exchange believes it is reasonable to charge flat fees for ports activated before July 1, 2019 as such ports are expected to be phased out within a short period of time after the introduction of the new gateways.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value, and are free to discontinue to connect to the Exchange through its ports. As noted, the Exchange is offering upgraded connections in an effort to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated member organizations and other market participants would be charged the same rates.

The Exchange believes that the proposed Transition Cap is not unfairly discriminatory because all member organizations would be eligible for the Transition Cap in equal measure and would thereby all be eligible to not be charged for more than the total number of ports that the member organization has activated as of its June 2019 invoice.

The Exchange further believes that the proposal does not permit unfair discrimination because the Exchange will be making available both the Phase I and Phase II ports available to all member organizations during the Transition Period on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. For the same reasons, the Exchange believes that the proposal would not permit unfair discrimination between member organizations.

Similarly, the proposal does not permit unfair discrimination between member organizations because the proposed Decommission Extension Fee would apply equally to all member organizations that choose to connect to the Exchange through the use of such ports during the Decommission Period. If a member organizations becomes subject to the Decommission Fee, it would only be because such firm chose

[30] The level of activity with respect to a particular port does not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant is still billed for that port.

not to complete its transition to the Phase II ports by the end of the Transition Period. While the Exchange cannot predict with certainty whether any firms would be subject to the Decommission Fee, and if so, which ones, based on NYSE Arca's experience with its decommission fee, the Exchange anticipates that it would be a limited set of member organizations that would incur such fees. Moreover, the Exchange believes that increasing the Decommission Extension Fee for each month for ports that communicate using Pillar phase I protocols once the Decommission Period begins would also apply equally to all member organizations that continue to choose to connect to the Exchange utilizing legacy ports.

The Exchange believes that the proposal to pro-rate port fees does not permit unfair discrimination because it would apply equally to all member organizations that connect to the Exchange, who would equally receive the benefit of being charged only for the connectivity utilized during any trading month beginning April 1, 2020. As noted, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during April 1, 2020 and any subsequent months, the Exchange believes it is fair, equitable and not unfairly discriminatory to continue to charge flat fees for such ports until such time that connection to the Exchange through the use of old ports is no longer available beginning October 1, 2020.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[31] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would offset the Exchange's continuing costs of supporting the Phase I ports for the few firms that do not transition to during the nine-month period and to adopt a fee cap and pro-rata billing for ports without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

*Intramarket Competition.* The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply to all member organizations equally that connect to the Exchange. All member organizations, regardless of size, will be eligible for the Transition Pricing for the billing months July 2019 through March 2020 and will be eligible to connect via either Phase I or Phase II ports during this period. In addition, all member organizations will be subject to the proposed Decommission Fee on an equal basis if they do complete the transition to Phase II ports by the end of March 2020. Based on the experience of the Exchange's affiliate, the Exchange anticipates that a low percentage of member organizations would be subject to the proposed Decommission Fee, and the firms likely to be subject to such fee would be larger firms that could more easily absorb the cost of that fee. The Exchange further believes that by providing nine months' notice of the Decommission Fee, all member organizations have an equal opportunity to timely transition to Phase II ports before the Decommission Fee would take effect.

*Intermarket Competition.* The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [32]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [33] Indeed, equity trading is currently dispersed across 13 exchanges,[34] 31 alternative trading systems,[35] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).[36] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing this transition pricing for ports in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products in response to fee changes. Because ports are used by member organizations to trade on the Exchange, fees associated with ports are subject to these same competitive forces. If a particular exchange charges excessive fees for connectivity, impacted members and non-members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing orders to the applicable exchange through another participant or market center.

The Exchange therefore believes that the proposal would not impose an undue burden on intermarket competition because the purpose of this filing is not to change the rates charged for ports but rather to, first, to provide a cap on how much member organizations would be charged for ports for a nine-month period so that they would not incur additional charges

[31] 15 U.S.C. 78f(b)(8).

[32] *See* Regulation NMS, 70 FR at 37499.

[33] *See* Transaction Fee Pilot, 84 FR at 5253.

[34] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[35] *See* FINRA ATS Transparency Data (June 3, 2019), available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of May 31, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[36] *See* Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

during the transition to Pillar communication protocols, and second, to provide that the fees for the few firms that do not transition to during the nine-month period offset the Exchange's continuing costs of supporting the Phase I ports. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with an orderly transition to upgraded technology without needing to incur any additional costs. If a member organization is unable to complete this transition within the nine-month period, the pricing is designed to offset the Exchange's continuing costs of supporting the Phase I ports.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [37] of the Act and subparagraph (f)(2) of Rule 19b–4 [38] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [39] 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–2019–39 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–2019–39. 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–2019–39 and should be submitted on or before August 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15138 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(2).

[39] 15 U.S.C. 78s(b)(2)(B).

[40] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Investment Company Act Release No. 33551; 812–15032

### Northern Lights Fund Trust III, et al.

July 11, 2019.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

**APPLICANTS:** Howard Capital Management, Inc. (the ''Initial Adviser''), a Delaware corporation that is registered as an investment adviser under the Investment Advisers Act of 1940, and Northern Lights Fund Trust III (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

**FILING DATES:** The application was filed on May 14, 2019 and amended on June 20, 2019.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on August 5, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Howard Capital Management, Inc., 1145 Hembree Road, Roswell, Georgia 30076; Northern Lights Fund Trust III, 225 Pictoria Drive, Suite 450, Cincinnati, OH 45246.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Kalish, Attorney-Adviser, at (202) 551–7361, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind

[1] Applicants request that the order apply to the new series of the Trust identified and described in Appendix A to that application and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Each Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15146 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86351; File No. SR–NYSE–2019–32]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change To Amend NYSE Rule 123D

July 11, 2019.

### I. Introduction

On May 24, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 123D to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 6, 2019.[3] The Commission has received no comment letters on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The Exchange has proposed to amend Rule 123D(d) to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange.

Currently, Rule 123D(d) permits the Exchange to declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security and that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 (the ''OTC market'') immediately prior to the initial pricing. Accordingly, the Exchange has authority to declare a regulatory halt for any initial listing that is not a transfer from either another national securities exchange or the OTC market. Regulatory halts under the rule terminate when the assigned Designated Market Maker (''DMM'') opens the security.

The Exchange has proposed to delete the clause ''or traded in the over-the-counter market pursuant to FINRA Form 211'' in NYSE Rule 123D(d). The proposed amendment would thus enable the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange and that was traded in the OTC market immediately prior to its initial pricing on the Exchange.

The Exchange notes that, although an OTC market security that will be listed on a primary listing exchange will be removed from the OTC trading list on the day before its initial pricing on the exchange, on the day of its initial listing, that security can trade on an unlisted trading privileges (''UTP'') basis before the first transaction on the primary listing exchange. The Exchange states that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange. The Exchange states that quoting and trading in the pre-market of an OTC transfer can be erratic and that investors may be harmed if their securities trade during this period. The Exchange asserts that the proposed limited authority to declare a regulatory halt in the hours prior to the OTC transfer's initial pricing on the Exchange would mitigate any potential price disparities and contribute to a fair and orderly market once the security opens on the Exchange and would be consistent with the protection of investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85990 (May 31, 2019), 84 FR 26462 (June 6, 2019) (''Notice'').

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that extending the authority of the Exchange to declare a regulatory trading halt prior to the initial pricing on the Exchange of securities that were previously traded in the OTC market is consistent with the Act because it is reasonably designed to address any potential price disparities or anomalies that may occur during UTP trading before the first transaction on the Exchange. The Commission notes that this regulatory halt would be terminated when the DMM opens the security, and would be for the limited purpose of precluding other markets from trading the security until the

[4] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

Exchange has completed the initial pricing process. The Commission believes this proposed change is reasonably designed to facilitate the initial opening by the DMM and thereby promote fair and orderly markets and the protection of investors.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2019–32) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15133 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86358; File No. SR–ICC–2019–007]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework

July 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to make certain changes to ICC's Clearing Rules (the ''Rules'')[3] and related procedures to provide for the clearing of credit default index swaptions.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice*

(a) Purpose

ICE Clear Credit proposes amendments to its Rules, End-of-Day Price Discovery Policies and Procedures (the ''EOD Policy'') and Risk Management Framework (the ''Risk Framework'') to provide for the clearing by ICC of credit default index swaptions (''Index Swaptions''). Pursuant to an Index Swaption, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.

ICC is proposing to adopt a new Subchapter 26R of its Rules, which will set out the contract terms and specifications for cleared Index Swaptions. ICC is also proposing to adopt amendments to its EOD Policy which would establish an end-of-day (''EOD'') settlement price submission process for Index Swaptions. Proposed amendments to the Risk Framework would address the margining and risk management processes for Index Swaptions, among other matters. The text of the proposed amendments is attached [sic] in Exhibit 5.

Prior to the commencement of clearing of Index Swaptions, ICC intends to adopt certain other policies and procedures, including a new set of Exercise Procedures, which will address in further detail the manner in which Index Swaptions may be exercised by Swaption Buyers and the manner in which ICC will assign such exercises to Swaption Sellers. ICC also expects to make certain changes to its Risk Management Model Description relating to the initial margin model for Index Swaptions. ICC will make subsequent filings pursuant to Rule 19b–4 with respect to such additional or amended policies or procedures as required. ICC does not intend to commence clearing of Index Swaptions until any such additional filings, as well as the current filing (''Index Swaptions Related Filings'') have been approved by the Commission or otherwise become effective. As such, ICC proposes to make the changes to the Rules, EOD Policy, and Risk Framework effective following the approval of all Index Swaptions Related Filings and the completion of the ICC governance process surrounding the Index Swaptions product expansion.

Rule Amendments

In new Subchapter 26R, Rule 26R–102 will set out key definitions used for Index Swaptions, which are generally similar to those used in the subchapters for other index Contracts cleared by ICC. Key defined terms would include ''Eligible Untranched Swaption Index'', which would specify the applicable series and version of a CDX or iTraxx index or sub-index underlying an Index Swaption. As with other index Contracts, ICC would maintain a List of Eligible Untranched Swaption Indices, which will contain the Eligible Untranched Swaption Indices as well as the eligible expiration dates and strike prices, as well as other relevant terms, for Index Swaptions that will be accepted for clearing by ICC. The rule would define the ''Relevant Index Swaption Untranched Terms Supplement'', which is the market-standard published standard terms document for index swaptions of the relevant type that would be incorporated by reference into the contract terms in the Rules for a cleared Index Swaption. The rule also would define the ''Underlying Contract,'' which would be the index CDS Contract into which the Index Swaption may be exercised, and the ''Underlying New Trade,'' which would be a new single name CDS trade that would arise upon exercise of an Index Swaption where a relevant Restructuring Credit Event, if

---

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

applicable, has occurred with respect to a reference entity in the relevant index.

New Rule 26R–103 would clarify the application of certain aspects of the Rules to Index Swaptions. For most purposes of the Rules, including Chapters 20 (regarding default management), 20A (regarding transfers of positions), 21 (regarding determination of credit events) and 26E (regarding restructuring credit events), Index Swaptions would be treated as CDS Contracts. Although Index Swaptions are ''physically settled,'' as that term is understood in the market for swaptions (meaning that the swaption, upon exercise, will result in the parties entering into an index credit default swap position on the specified terms), the physical settlement terms for CDS Contracts in Chapter 22 of the Rules would not apply to settlement of the Index Swaption itself. Once an Index Swaption has been exercised, the resulting Underlying Contract and Underlying New Trade, if any, would themselves be treated as CDS Contracts for all purposes of the Rules.

In Rule 26R–309, CDS Participants agree to use reasonable efforts not to submit for clearing an Index Swaption at a time when the Underlying Contract could not be submitted for clearing under the Rules or at a time when the CDS Participant would be under an obligation to use reasonable efforts not to submit such Underlying Contract. (The Rules related to CDS Contracts cleared by ICC impose limitations on submission of trades for clearing at certain times.)[4] As with other CDS Contracts under the Rules, a CDS Participant would also be required to notify ICC if it has submitted an Index Swaption that was not a Conforming Trade under the Rules.

Rule 26R–315 would establish certain basic terms for Index Swaptions. The Rule would provide that the Index Swaption is governed by the Relevant Index Swaption Untranched Terms Supplement (which contains the market standard terms for uncleared Index Swaptions of the relevant type), subject to the relevant provisions of Subchapter 26R of the Rules (which would govern in the case of any inconsistency). The approach is consistent with the treatment of other cleared index CDS Contracts under the Rules, which rely on and incorporate their own forms of standard terms supplements.

Rule 26R–316 would address the situation where a new Index Swaption Untranched Terms Supplement is published. Consistent with ICC's practice for other index CDS Contracts, the ICC Board or its designee would determine whether Index Swaptions referencing the existing standard terms supplement would be fungible with Index Swaptions referencing the new standard terms supplement, and if so, ICC would update existing Index Swaptions to reference the new standard terms supplement.

Rule 26R–317 specifies other key terms for Index Swaptions. Subsection (a) addresses certain modifications to the Relevant Index Swaption Standard Terms Supplement and the 2014 Definitions incorporated therein, in the context of an Index Swaption referencing a CDX.NA index. These generally reflect changes necessary to accommodate the clearing of the Index Swaption transactions, including to incorporate the clearing house's procedures for determination of a Credit Event and for application of physical settlement, and are consistent with similar modifications used for the Underlying Contract itself under the applicable subchapter of Chapter 26 of the Rules. Subsection (b) makes similar modifications in the case of an Index Swaption referencing an iTraxx Europe index. Rule 26R–317(c) states explicitly that Index Swaptions will be physically settled in accordance with Subchapter 26R (and not, for the avoidance of doubt, the physical settlement rules in Chapter 22 (which may apply to the settlement of the Underlying Contract, if applicable, but not to the settlement of the Index Swaption)).

Rule 26–317(d) sets out certain terms and elections under the Relevant Index Swaption Untranched Terms Supplement that will apply to all Index Swaptions of a particular type and underlying index. Significantly, ICC will only accept Index Swaptions that are European style, such that the option may only be exercised on the expiration date. ICC is defined as the Calculation Agent, except as provided in the CDS Committee Rules in Chapter 21. The rule would also set out certain elections regarding the Underlying Contract.

Rule 26–317(e) would set out the terms for an Index Swaption that must be included in the submission of a transaction for clearing, including identifying the underlying index, swaption trade date, expiration date, Swaption Buyer, Swaption Seller, strike price and swaption premium. The submission would also specify whether the Index Swaption is a ''payer'' or ''call'' option, in which case the Swaption Buyer, upon exercise, would be the fixed rate payer under the Underlying Contract, or a ''receiver'' or ''put'' option, in which case the Swaption Seller, upon exercise, would be the fixed rate payer under the Underlying Contract. The submission would also specify the scheduled termination date of the Underlying Contract and original notional amount of the Underlying Contract.

Procedures for exercise and assignment of Index Swaptions would be addressed in new Rule 26R–318. Specifically, an Open Position in an Index Swaption may be exercised on its expiration date by the relevant Participant (or, in the case of a client position, the relevant Non-Participant Party) that is the Swaption Buyer delivering an exercise notice to ICC.[5] When ICC receives exercise notices in respect of a particular type of Index Swaption on its expiration date, ICC will assign the exercise notices to Open Positions of Participants that are Swaption Sellers (across both the house and customer origin accounts) in accordance with the Exercise Procedures. Such an assignment will constitute exercise by ICC of its Index Swaption position against such Swaption Sellers (and the exercise of the position between the exercising Swaption Buyer and ICC and an offsetting position between ICC and the assigned Swaption Seller will be deemed to occur simultaneously). The assignment of an exercise notice does not create a direct relationship between the exercising Swaption Buyer and the assigned Swaption Seller; both such parties continue to face ICC as clearing organization. Index Swaptions that are not validly exercised on the expiration date will expire without further obligation of any party.

New Rule 26R–319 would address procedures for settlement of an exercised Index Swaption. Upon exercise, a cleared Contract in the form of the Underlying Contract will automatically come into effect as between the exercising Swaption Buyer and ICC and an offsetting cleared Contract will automatically come into effect as between ICC and the assigned Swaption Seller. A settlement payment in connection with the exercise (representing a strike adjustment amount based on the strike price of the Index Swaption and an accrual amount (reflecting the accrued fixed payment for the Underlying Contract through expiration)) will be paid by one party to

[4] See, *e.g.,* ICC Rule 26A–309.

[5] ICC contemplates that it will adopt a set of Exercise Procedures that will provide further detail as to the manner in which Index Swaptions may be exercised by Swaption Buyers and in which notices of exercise will be assigned to Swaption Sellers. The Exercise Procedures may also detail any circumstances under which Index Swaptions would be automatically exercised at expiration. ICC expects that it will separately file such procedures for approval under Rule 19b–4 as required.

the other in accordance with the terms of the relevant Index Swaption (based on the Relevant Index Swaption Untranched Terms Supplement).

Consistent with the terms of the Index Swaption, additional settlements may be required under Rule 26R–319(b) if one or more Credit Events has occurred with respect to the underlying index at or prior to the expiration date of the Index Swaption. In general, such settlements are designed so that the party in the position of the protection buyer under the Index Swaption would receive settlement for all such Credit Events as if it had held the Underlying Contract at the time of the Credit Event. These settlement amounts may include auction cash settlement amounts, fixed rate payments, and accruals with respect to such credit events. The proposed rule would also provide for an additional accrual amount, owed by the party that is in the position of fixed rate payer or floating rate payer, as applicable, to ensure consistency in economic result where the swaption expiration occurs after the relevant auction date for a Credit Event as compared to cases where expiration occurs before the auction date. Rule 26R–319(b) also addresses cases where the relevant Underlying Contract is itself subject to physical settlement under Chapter 22 of the Rules, and provides for matching of Swaption Buyers and Swaption Sellers for that purpose. Rule 26R–319(c) would apply in the case of a relevant M(M)R Restructuring Credit Event, and provide for delivery of MP Notices (both Restructuring Credit Event Notices and Notices to Exercise Movement Option) by Swaption Buyer and Swaption Sellers prior to expiration of the Index Swaption, which will have effect with respect to the Underlying New Trade established if the Index Swaption is exercised. Subsection (c) also addresses settlement with respect to the Underlying New Trade.

Rule 26R–502 would clarify that certain actions do not constitute Specified Actions subject to Risk Committee consultation, including adding new eligible strike prices and expiration dates for Index Swaptions and adding new series and tenors for the Underlying Contracts for Index Swaptions. Consistent with similar provisions for other product subchapters, Rule 26R–616 would provide that actions to give effect to certain determinations of the Credit Derivatives Determinations Committee or Regional CDS Committee, such as succession events and the like, would not constitute a Contract Modification for purposes of the Rules.

EOD Policy Amendments

ICC also proposes to amend its EOD Policy to incorporate Index Swaptions. The EOD Policy sets out ICC's EOD price discovery process used to determine the daily settlement prices for all cleared Contracts, based on submissions made by Participants. The amended EOD Policy would specify the characteristics that define a unique Index Swaption instrument for purposes of price submissions, including exercise style, underlying index, option type (put or call), expiration date, strike price and convention (price or spread) and transaction type (reflecting the applicable legal documentation). The policy would further define a ''put/call surface pair,'' as the group of Index Swaptions with the same combination of underlying index, strike convention and transaction type, but differ with respect to option type, expiration date and strike price, and a ''surface,'' as the group of Index Swaptions from a given put/call surface pair with the same option type (such that for every put/call surface pair there is a put surface and a call surface). Under the policy, a ''strip'' would be referred to as the group of Index Swaptions on a given surface with the same expiration date (but with different strike prices).

The revised EOD Policy would establish a methodology for determining EOD bid-offer widths (''BOWs'') for clearing-eligible Index Swaptions, which are used for establishing EOD settlement prices. Under the methodology, ICC uses the EOD BOW of the Underlying Contract in price terms for each put/call surface pair. For each strip, ICC would determine an around-at-the money BOW using the underlying index EOD BOW and scaling factors that take into account time to expiry and the magnitude of an at-the-money swaption's BOW as related of the BOW of the underlying. ICC then determines a systematic BOW for each Index Swaption on a strip by applying an in-the-moneyness scaling factor based on strike prices. The final BOW for an Index Swaption would be determined as the greater of the systematic BOW and a dynamic BOW determined on the range of a series of unique price submissions made by Participants for the particular Index Swaption (excluding certain of the largest and smallest elements), in a manner similar to that currently used for calculating dynamic BOWs for single name instruments.

The EOD Policy also would set out price submission requirements for Participants. If a Participant has a gross notional position in any Index Swaption in any strip of puts or calls, the Participant must provide submissions for all clearing-eligible instruments in that strip of puts or calls and the corresponding strip of calls or puts. In addition, if an insufficient number of Participants are required to submit under this standard, ICC may require all Participants to provide relevant submissions. Under the amendments, ICC would establish a separate price submission window for Index Swaptions that differs from the current submission window for CDS Contracts. The policy would specify the required format of submissions, and permit either midpoint or bid-offer pair submissions. ICC will convert submissions into standardized bid-offer pairs using the calculated EOD BOW as discussed above. ICC would also determine implied forward prices for all underlying index instruments for which EOD Index Swaption prices are determined, for maturities corresponding to each Index Swaption expiration date.

ICC would apply its firm trade requirements, under which a subset of trades generated by ICC's cross-and lock algorithm are required to be entered into by Participants, to Index Swaptions. As with other cleared products, there would be a notional limit for firm Index Option trades for Participants affiliate groups. The amended policy would set out procedures for determining the relevant firm trade days for Index Swaptions and the strips of puts and calls that are firm-trade eligible. Firm trades in Index Swaptions may be eligible for reversing transactions, in a similar manner to other firm trades.

The amendments would address distribution of Index Swaption prices, both to Participants and publicly. The amendments also amend the governance provisions of the EOD Policy to incorporate the relevant functions of the ICC Risk Management Department regarding Index Swaptions. The table in the appendix setting out the timing for various aspects of the price submission process would also be updated to incorporate Index Swaptions.

The amendments would make certain other clarifications to the EOD Policy, including references to additional alternative price sources that ICC may use in establishing settlement prices. Certain clarifications would be made to the existing process for index and single name CDS Contracts to distinguish it from the additional submission process for Index Swaptions. Certain updates to defined terms and typographical and similar corrections would also be made.

Risk Framework Amendments

ICC would make conforming changes to its Risk Framework to incorporate the clearing of Index Swaptions. The amendments would, among other matters, define Index Swaptions and identify key terms of Index Swaptions, consistent with the Rules and EOD Policy. For risk management purposes, the Risk Framework would define an instrument as a specific combination of underlying index, expiration date, strike price, option type, exercise type, currency and transaction type. The amendments would address the application of the ICC initial margin model to Index Swaptions, including the integrated spread response component of the margin model, based on implied forward looking Index Swaption prices. Index Swaptions would not be eligible for index-single name decomposition benefits for purposes of determining the integrated spread response and accordingly would not be subject to basis risk requirements based on decomposed index positions. Certain price-based scenarios and jump to default requirements in the margin model would, in the case of Index Swaptions, be applied to delta equivalent notional amounts of the underlying index swap position. The framework would also apply concentration charges to Index Swaption positions, based on delta equivalent notional amounts of the underlying index.

Amendments to the Risk Framework would also remove certain outdated references and clarify certain risk management data and systems used in the margin models. Risk management review procedures contained in an appendix to the document would also be updated to incorporate Index Swaptions.

(b) Statutory Basis

ICC believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[7] In particular, Section 17A(b)(3)(F) of the Act requires that that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest.[8]

The amendments would provide for clearing of an additional type of contract, Index Swaptions. When exercised, Index Swaptions would result in the creation of an underlying index CDS Contract cleared by ICC. Index Swaptions would only relate to underlying index CDS Contracts that are accepted for clearing by ICC. The Rule amendments would provide for the creation of a new Subchapter 26R of the Rules governing the terms and conditions of Index Swaptions. In general, the Rules would incorporate market-standard documentation for Index Swaptions (much as ICC does for other categories of cleared contract), with applicable changes to reflect the clearing process at ICC. The Rule amendments would also provide for the exercise of Index Swaptions by Swaption Buyers, and the assignment of exercised positions to Swaption Sellers, and the settlement of Index Swaptions following exercise. The revised EOD Policy would provide a means for daily pricing of Index Swaptions for settlement and margining purposes, in a manner similar to that for other cleared Contracts. In addition, the Risk Framework would be updated, principally to incorporate Index Swaptions into the ICC's initial margin model, among other risk management matters. In ICC's view, clearing of Index Swaptions on these terms and arrangements would extend the benefits of clearing to market participants that use these products, enhancing the functioning of the derivatives markets and providing increased ability for market participants to manage risk through the cleared environment. With the proposed amendments to the EOD Policy and Risk Framework, ICC believes the Index Swaptions can be effectively cleared within ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Margin provided in connection with the clearing of Index Swaptions would be held by ICC in the same manner, and with the same protections, as margin provided in respect of other cleared Contracts. Accordingly, in ICC's view, the amendments are consistent with the prompt and accurate clearance and settlement of derivatives transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.

The amendments will also satisfy relevant requirements of Rule 17Ad–22,[9] as set forth in the following discussion.

*Financial Resources.* Rule 17Ad–22(b)(2)–(3) [10] requires, in relevant part, a clearing agency for security-based swaps to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements'' and maintain financial resources ''sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposure in extreme but plausible market conditions.'' As discussed above, ICC is modifying the Risk Framework, and in particular the initial margin model, to apply to Index Swaptions. With these modifications, ICC believes that its initial margin and guaranty fund resources will be sufficient to meet ICC's financial obligations to Participants with respect to cleared Index Swaptions as well as other cleared Contracts notwithstanding a default by the two Participant families creating the largest combined loss, in extreme but plausible market conditions, consistent with these regulatory requirements. ICC does not propose to otherwise reduce or change its financial resources.

*Operational Resources.* Rule 17Ad–22(d)(4) requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''identify sources of operational risk and minimize them through the development of appropriate systems, controls and procedures.'' [11] ICC proposes to modify its EOD Policy and Risk Framework to facilitate pricing and risk management of Index Swaptions, within ICC's existing systems and procedures. ICC believes that with these modifications, its operational and managerial resources will be sufficient to support clearing of Index Swaptions, consistent with the requirements of Rule 17Ad–22(d)(4).[12]

*Settlement Procedures.* Rule 17Ad–22(d)(12) [13] requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''ensure that final settlement occurs no

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(b)(2)–(3).

[11] 17 CFR 240.17Ad–22(d)(4).

[12] 17 CFR 240.17Ad–22(d)(4).

[13] 17 CFR 240.17Ad–22(d)(12).

later than the end of the settlement day, and require that intraday or real-time finality be provided where necessary to reduce risks.'' ICC proposes to amend its EOD Policy to accommodate Index Swaptions. The revised policy will provide a robust basis for calculation of EOD settlement prices for cleared Index Swaptions, which in turn will serve as the basis for Mark-to-Market Margin settlement for Index Swaptions. As such, ICC believes its arrangements for settlement of Index Swaptions will be consistent with the requirements of the Rule as to the finality and accuracy of its daily settlement process.

In addition, Rule 17Ad–22(d)(15) requires the clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.'' [14] The amended Rules clearly set out the procedures for settlement of Index Swaptions on exercise, which result in the creation of a cleared underlying index CDS Contract (and in some cases in the event of a Restructuring Credit Event, an Underlying New Trade). The Rules also provide for settlements of credit events that occur prior to exercise of an Index Swaption, consistent with the documentation for such contracts. In ICC's view, the Rules, as well as the amended Risk Framework and its existing risk management procedures, enable ICC to identify and manage the risks of settlement of Index Swaptions on exercise. As such, the amendments would satisfy the requirements of the Rule.

*Default Procedures.* Rule 17Ad–22(d)(11) [15] requires the clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.'' ICC will apply its existing default management Rules and procedures to the management of any default involving Index Swaptions. ICC believes these arrangements allow it to take timely action to contain losses and liquidity pressures, and to continue meeting its obligations, in the case of such a default involving Index Swaptions, and are therefore consistent with the Rule.

[14] 17 CFR 240.17Ad–22(d)(15).

[15] 17 CFR 240.17Ad–22(d)(11).

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will authorize the clearing of Index Swaptions as an additional type of Contract. Index Swaptions will be available to all ICC Participants for clearing. ICC does not believe acceptance of Index Swaptions for clearing would adversely affect the trading markets for such contracts, and in fact acceptance of such contracts by ICC would provide market participants with the additional flexibility to have their Index Swaptions cleared. Acceptance of the Index Swaptions for clearing will not, in ICC's view, adversely affect clearing of any other currently cleared product. As a result, ICC does not believe the amendments would adversely affect the ability of Participants, their customers or other market participants to continue to clear contracts, including CDS Contracts. ICC also does not believe the enhancements would adversely affect the cost of clearing or otherwise limit market Participants' choices for selecting clearing services in Index Swaptions, credit default swaps or other products. Accordingly, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice 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 such 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, security-based swap submission, or advance notice 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–ICC–2019–007 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–ICC–2019–007. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2019–007 and should be submitted on or before August 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15136 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86356; File No. 4–747]**

## Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Long-Term Stock Exchange, Inc.

July 11, 2019.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on July 11, 2019, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and the Long-Term Stock Exchange, Inc. (''LTSE'') (together with FINRA, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a plan for the allocation of regulatory responsibilities, dated July 11, 2019 (''17d–2 Plan'' or the ''Plan''). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

### I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

### II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both LTSE and FINRA.[10] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''LTSE Certification of Common Rules,'' referred to herein as the ''Certification'') that lists every LTSE rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to LTSE members that are also members of FINRA and the associated persons therewith (''Dual Members'').

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of LTSE that are substantially similar to the applicable rules of FINRA,[11] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules''). In the event that a Dual Member is the subject of an investigation relating to a transaction on LTSE, the plan acknowledges that LTSE may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[12]

Under the Plan, LTSE would retain full responsibility for surveillance and

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[10] The proposed 17d–2 Plan refers to these common members as ''Dual Members.'' *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[11] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either LTSE rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that LTSE shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[12] *See* paragraph 6 of the proposed 17d–2 Plan.

enforcement with respect to trading activities or practices involving LTSE's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any LTSE rules that are not Common Rules.[13]

The text of the proposed 17d–2 Plan is as follows:

**Agreement Between Financial Industry Regulatory Authority, Inc. and Long-Term Stock Exchange, Inc. Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934**

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (''FINRA'') and Long-Term Stock Exchange, Inc. (''LTSE''), is made this 11th day of July, 2019 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and LTSE may be referred to individually as a ''party'' and together as the ''parties.''

*Whereas,* FINRA and LTSE desire to reduce duplication in the examination and surveillance of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

*Whereas,* FINRA and LTSE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

*Now, therefore*, in consideration of the mutual covenants contained hereinafter, FINRA and LTSE hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*LTSE Rules*'' or ''*FINRA Rules*'' shall mean: (i) The rules of LTSE, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean LTSE Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination or surveillance for compliance with such provisions and rules would not require FINRA to develop one or more new examination or surveillance standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, LTSE or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca Inc., and Investors' Exchange LLC effective October 10, 2018, as may be amended from time to time. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from LTSE, (ii) incorporation by reference of LTSE Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by LTSE, (iv) prior written approval of LTSE and (v) payment of fees or fines to LTSE.

(c) ''*Dual Members*'' shall mean those LTSE members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall be the date this Agreement is approved by the Commission.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities, surveillance responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, LTSE furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are LTSE Rules are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of LTSE or FINRA, LTSE shall submit an updated list of Common Rules to FINRA for review which shall add LTSE Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete LTSE Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be LTSE Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and LTSE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving LTSE's own marketplace for rules that are not Common Rules;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any LTSE Rules that are not Common Rules.

3. *Dual Members.* Prior to the Effective Date, LTSE shall furnish FINRA with a current list of Dual

[13] *See* paragraph 2 of the proposed 17d–2 Plan.

Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to LTSE by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as otherwise agreed by the parties, either herein or in a separate agreement.

5. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule or order is inconsistent with this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. *Notification of Violations.*

(a) In the event that FINRA becomes aware of apparent violations of any LTSE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify LTSE of those apparent violations for such response as LTSE deems appropriate.

(b) In the event that LTSE becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, LTSE shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on LTSE, LTSE may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.*

(a) FINRA shall make available to LTSE all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish LTSE any information it obtains about Dual Members which reflects adversely on their financial condition. LTSE shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Statutory Disqualifications.* When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep LTSE advised of its actions in this regard for such subsequent proceedings as LTSE may initiate.

9. *Customer Complaints.* LTSE shall forward to FINRA copies of all customer complaints involving Dual Members received by LTSE relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. *Advertising.* FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement may be terminated by LTSE or FINRA at any time upon the approval of the Commission after six (6) month's written notice to the other party.

13. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, LTSE and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. *Notification of Members.* LTSE and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

15. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. *Limitation of Liability.* Neither FINRA nor LTSE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or LTSE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or LTSE with respect to any of the responsibilities to be performed by each of them hereunder.

17. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and LTSE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve LTSE of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

18. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

* * * * *

**Exhibit 1**

*LTSE Certification of Common Rules*

LTSE hereby certifies that the requirements contained in the rules listed below for LTSE are identical to, or substantially similar to, the comparable FINRA (NASD) Rules, Exchange Act provision or SEC rule identified (''Common Rules'').

| LTSE Rule | FINRA (NASD) Rule, Exchange Act Provision, SEC Rule |
|---|---|
| Rule 2.140 Prohibited Conditions Relating to Expungement of Customer Dispute. | FINRA Rule 2081 Prohibited Conditions Relating to Expungement of Customer Dispute. |
| Rule 2.160(p) Registration Requirements and Restrictions on Membership—Continuing Education Requirements [#]. | FINRA Rule 1240(a)(1)–(4), (6)–(7) and (b) Continuing Education Requirements. |
| Rule 2.240 Fidelity Bonds [#] | FINRA Rule 4360 Fidelity Bonds. |
| Rule 3.110 Business Conduct of Members [^] | FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.[^] |
| Rule 3.120 Violations Prohibited [1] [^] [#] | FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade [^] and FINRA Rule 3110 Supervision. |
| Rule 3.130 Use of Fraudulent Devices [^] | FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices.[^] |
| Rule 3.150 Know Your Customer | FINRA Rule 2090 Know Your Customer. |
| Rule 3.160 Fair Dealing with Customers | FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device, [^] FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade,[^] FINRA Rule 2111(a) and SM .06 Suitability, FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts, and FINRA Rule 3240(a) Borrowing From or Lending to Customers. |
| Rule 3.170 Suitability | FINRA Rule 2111 Suitability. |
| Rule 3.180(a) The Prompt Receipt and Delivery of Securities | FINRA Rule 11860 COD Orders. |
| Rule 3.180(b) The Prompt Receipt and Delivery of Securities | SEA Regulation SHO. |
| Rule 3.190 Charges for Services Performed | FINRA Rule 2122 Charges for Services Performed. |
| Rule 3.200 Use of Information Obtained in a Fiduciary Capacity | FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity. |
| Rule 3.210 Publication of Transactions and Quotations | FINRA Rule 5210 Publication of Transactions and Quotations. |
| Rule 3.220 Offers at Stated Prices | FINRA Rule 5220 Offers at Stated Prices. |
| Rule 3.230 Payments Involving Publications that Influence the Market Price of a Security. | FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security. |
| Rule 3.240 Customer Confirmations | FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b–10 Confirmation of Transactions. |
| Rule 3.250 Disclosure of Control Relationship with Issuer | FINRA Rule 2262 Disclosure of Control Relationship with Issuer. |
| Rule 3.260 Discretionary Accounts | NASD Rule 2510 Discretionary Accounts. |
| Rule 3.270 Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts. | FINRA Rule 2150(a)–(c) and SM .03 Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts. |
| Rule 3.280 Communications with Customers and the Public | FINRA Rule 2210 Communications with the Public. |
| Rule 3.290 Customer Disclosures | FINRA Rule 2265 Extended Hours Trading Risk Disclosure. |
| Rule 3.291 Influencing or Rewarding Employees of Others; Gratuities | FINRA Rule 3220 Influencing or Rewarding Employees of Others. |
| Rule 3.292 Telemarketing | FINRA Rule 3230 Telemarketing. |
| Rule 3.293 Short-Interest Reporting | FINRA Rule 4560 Short Interest Reporting.[#] |
| Rule 4.511 General Requirements | FINRA Rule 4511 General Requirements. |
| Rule 4.512 Customer Account Information | FINRA Rule 4512 Customer Account Information. |
| Rule 4.513 Record of Written Customer Complaints | FINRA Rule 4513 Record of Written Customer Complaints. |
| Rule 4.550 Disclosure of Financial Condition | FINRA Rule 2261 Disclosure of Financial Condition. |
| Rule 5.110 Supervision [#] | FINRA Rule 3110 Supervision. |
| Rule 5.120 Supervisory Control System [#] | FINRA Rule 3120 Supervisory Control System. |
| Rule 5.130 Annual Certification of Compliance and Supervisory Processes [#]. | FINRA Rule 3130 Annual Certification of Compliance and Supervisory Processes. |
| Rule 5.160 Anti-Money Laundering Compliance Program [#] | FINRA Rule 3310 Anti-Money Laundering Compliance Program. |
| Rule 5.170 Transactions for or by Associated Persons | FINRA Rule 3210 Accounts At Other Broker-Dealers and Financial Institutions. |
| Rule 6.120 Failure to Deliver and Failure to Receive | Regulation SHO Rules 200 and 203. |
| Rule 6.130(a), (b), (d) and (e) Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting. | FINRA Rule 2251 Forwarding of Proxy and Other Issuer-Related Materials. |
| Rule 10.110(a) Market Manipulation | FINRA Rule 6140 Other Trading Practices. |
| Rule 10.110(b) Market Manipulation | FINRA Rule 5210 Publication of Transactions and Quotations, FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices, FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade, and FINRA Rule 6140(a) Other Trading Practices. |
| Rule 10.120 Fictitious Transactions | FINRA Rule 6140 Other Trading Practices and FINRA Rule 5210 Supplementary Material .02 Self-Trades. |
| Rule 10.130 Excessive Sales By A Member | FINRA Rule 6140(c) Other Trading Practices. |
| Rule 10.140 Manipulative Transactions | FINRA Rule 6140 Other Trading Practices. |

| LTSE Rule | FINRA (NASD) Rule, Exchange Act Provision, SEC Rule |
|---|---|
| Rule 10.150 Dissemination of False Information | FINRA Rule 6140(e) Other Trading Practices. |
| Rule 10.160 Prohibition Against Trading Ahead of Customer Orders # ** | FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders.** |
| Rule 10.180 Influencing the Consolidated Tape | FINRA Rule 6140(a) Other Trading Practices and FINRA Rule 5210 Publication of Transactions and Quotations. |
| Rule 10.190 Trade Shredding | FINRA Rule 5290 Order Entry and Execution Practices. |
| Rule 10.220 Best Execution and Interpositioning ** | FINRA Rule 5310 Best Execution and Interpositioning.** |
| Rule 10.240 Trading Ahead of Research Reports ** | FINRA Rule 5280 Trading Ahead of Research Reports.** |
| Rule 10.260 Front Running of Block Transactions | FINRA Rule 5270 Front Running of Block Transactions.** |
| Rule 11.280(e)(3) & (4) Limit Up-Limit Down Plan and Trading Halts—Limit Up-Limited Down Mechanism. | FINRA Rule 6190(a)(1) & (2) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility. |

# Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from LTSE, (ii) incorporation by reference of LTSE Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by LTSE, (iv) prior written approval of LTSE and (v) payment of fees or fines to LTSE.

[1] FINRA shall only have Regulatory Responsibilities for Rule 3.120(a) regarding conduct in violation of the Act, or the rules or regulations thereunder.

^ FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., and Investors' Exchange LLC effective October 10, 2018, as may be amended from time to time.

** FINRA shall perform the surveillance responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

*In addition, the following provisions shall be part of this 17d–2 Agreement:*

*SEA Rules:*

- SEA Rule 200 of Regulation SHO—Definition of Short Sales and Marking Requirements **
- SEA Rule 201 of Regulation SHO—Circuit Breaker **
- SEA Rule 203 of Regulation SHO—Borrowing and Delivery Requirements **
- SEA Rule 204 of Regulation SHO—Close-Out Requirement **
- SEA Rule 101 of Regulation M—Activities by Distribution Participants **
- SEA Rule 102 of Regulation M—Activities by Issuers and Selling Security Holders During a Distribution **
- SEA Rule 103 of Regulation M—Nasdaq Passive Market Making **
- SEA Rule 104 of Regulation M—Stabilizing and Other Activities in Connection with an Offering **
- SEA Rule 105 of Regulation M—Short Selling in Connection With a Public Offering **
- SEA Rule 604 of Regulation NMS—Display of Customer Limit Orders **
- SEA Rule 606 of Regulation NMS—Disclosure of Routing Information **
- SEA Rule 610(d) of Regulation NMS—Locking or Crossing Quotations **
- SEA Rule 611 of Regulation NMS—Order Protection Rule **
- SEA Rule 10b–5 Employment of Manipulative and Deceptive Devices ^
- SEA Rule 17a–3/17a–4—Records to Be Made by Certain Exchange Members, Brokers, and Dealers/Records to Be Preserved by Certain Exchange Members, Brokers, and Dealers ^

## III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act [14] and Rule 17d–2 thereunder,[15] after August 1, 2019, the Commission may, by written notice, declare the plan submitted by LTSE and FINRA, File No. 4–747, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

## IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve LTSE of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

[14] 15 U.S.C. 78q(d)(1).

[15] 17 CFR 240.17d–2.

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–747 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number 4–747. 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/other.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 plan also will be available for inspection and copying at the principal offices of LTSE and FINRA. 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 4–747 and should be submitted on or before August 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15144 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86353; File No. SR–CboeEDGX–2019–039]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Stock-Option Order Functionality and Complex Qualified Contingent Cross (''QCC'') Order With Stock Functionality, and To Make Other Changes to its Rules

July 11, 2019.

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 June 27, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to add stock-option order functionality and complex qualified contingent cross (''QCC'') order with stock functionality, and to make other changes to its Rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (''Cboe Global''), which is the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2''), acquired the Exchange, Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, the Exchange, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its technology to the same trading platform used by the Exchange, C2, and BZX Options in the fourth quarter of 2019. The proposal set forth below is intended to add certain functionality to the Exchange's System that is available on Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange proposes to adopt stock-option order functionality.[5] Stock-option orders facilitate the execution of the stock component of qualified contingent trades (''QCTs''). The proposed rule change defines a stock-option order as the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of an option contract(s)[6] on the opposite side of the market representing either (1) the same number of units of the underlying stock or convertible security or (2) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg(s) to the total number of units of the underlying stock or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange[7] with no more than the applicable number of legs are eligible for processing.[8] Stock-option orders execute in the same manner as other complex orders, except as otherwise provided in Rule 21.20 as proposed.

Currently, to execute a QCT, a User would need to submit an option order to the Exchange and separately submit the stock order to a stock execution venue.[9] The option order represents one component of a QCT and must be paired

[16] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* proposed Rule 21.20(b).

[6] This proposed definition permits stock-option orders to have one or more option leg [sic], all of which will be handled in the same manner.

[7] Pursuant to Rule 16.3, the Exchange announces all determinations it makes pursuant to the Rules via specifications, Notices, or Regulatory Circulars with appropriate advanced notice, which will be posted on the Exchange's website, or as otherwise provided in the Rules; electronic message; or other communication method as provided in the Rules. All determinations the Exchange makes pursuant to Rule 21.20 will be made in accordance with Rule 16.3.

[8] *See* proposed Rule 21.20(b). This definition is virtually identical to the Cboe Options definition, except the proposed definition does not provide the Exchange with flexibility to lower the permissible ratio of stock-option orders like the Cboe Options definition, as the Exchange does not believe it needs this flexibility. *See* Cboe Options Rule 6.53C(a)(1). The proposed definition is also substantially the same as the definition of stock-option order of other options exchanges. *See, e.g.,* Miami International Securities Exchange, LLC (''MIAX'') Rule 518(a)(5); and NASDAQ ISE, LLC (''ISE'') Options 3, Section 14(a)(2) and (3). The definition is also consistent with the definition of a Complex Trade in the linkage rules in Rule 27.1(a)(4).

[9] The Exchange currently permits the submission of qualified contingent cross (''QCC'') orders with stock, which is a specific type of stock-option order. *See* current Rule 21.20(c)(7) (proposed Rule 21.20(l)(3)).

with a stock order. When a User enters the option component of a QCT, the User is responsible for executing the associated stock component of the QCT within a reasonable period of time after the option order is executed. The Exchange conducts surveillance of Users to ensure that Users execute the stock component of a QCT at or near the same time as the options component. While the Exchange does not specify how the User should go about executing the stock component of the trade, this process is often manual and is therefore a compliance risk for Users if they do not execute the stock component within a reasonable time period of execution of the options component. Thus, the Exchange is proposing to offer stock-option order functionality, pursuant to which the Exchange will automatically communicate the stock component of a QCT to a designated broker-dealer for execution in connection with the execution of the option order on the Exchange. Use of stock-option order functionality will be voluntary, and Users may continue to execute components of a QCT in the manner they do today (as described above).

Pursuant to proposed Rule 21.20, Interpretation and Policy .03, a User may only submit a stock-option order (including a QCC with Stock Order) if it complies with the QCT exemption from Rule 611(a) of Regulation NMS (''QCT exemption'').[10] A User submitting a stock-option order represents that it complies with the QCT exemption. To submit a stock-option order to the Exchange for execution, a User must enter into a brokerage agreement with one or more broker-dealers that are not affiliated with the Exchange, which broker-dealer(s) the Exchange has identified as having connectivity to electronically communicate the stock components of stock-option orders to stock trading venues.[11]

Proposed subparagraph (l)(1) states when a User submits to the System a stock-option order, it must designate a specific broker-dealer with which it has entered into a brokerage agreement pursuant to proposed Interpretation and Policy .03 (the ''designated broker-dealer'') to which the Exchange will electronically communicate the stock component of the stock-option order on behalf of the User.[12]

Proposed Rule 21.20(l)(2) describes how stock-option orders will execute. A stock-option order may execute against other stock-option orders (or COA Responses, if applicable), but may not execute against orders in the Simple Book.[13] A stock-option order may only execute if the price complies with proposed Rule 21.20(f)(2)(B).[14] If a stock-option order can execute upon entry or following a COA, or if it can execute following evaluation while resting in the COB pursuant to Rule 21.20(i), the System executes the option component (which may consist of one or more option legs) of a stock-option order against the option component of other stock-option orders resting in the COB or COA responses (in time priority) (which is consistent with how other complex orders execute against each other pursuant to proposed subparagraphs (d)(5)(ii) and (e)(2)), as applicable. However, the Exchange does not immediately send the User a trade execution report for this option execution.[15] Because the User submitted a stock-option order to execute as a package, the Exchange waits to send a trade execution report to the User until after it has determined whether all components of the stock-option order have executed, as described below. After the option component is executed, the Exchange will then automatically communicate the stock component to the designated broker-dealer for execution, as further described below.

If the System receives an execution report for the stock component of a stock-option order from the designated broker-dealer, the Exchange sends the User the trade execution report for the stock-option order, including execution information for both the stock and option components. However, if the System receives a report from the designated broker-dealer that the stock component of the stock-option order cannot execute,[16] the Exchange nullifies the option component trade and notifies the User of the reason for the nullification.[17] If a stock-option order is not marketable, it rests in the COB (if eligible to rest), subject to a User's instructions. The proposed rule change prevents execution of the option component of a QCT where the stock component has not been successfully executed, just as the proposed rule change prevents execution of the stock component of a QCT where the option component has not been successfully executed by cancelling the stock component if the option component cannot execute. This proposed execution process is the same process the Exchange currently uses to execute QCC with Stock Orders, which are a type of stock-option order (and thus the

[10] *See* Rule 21.1(d)(10)(A) for the definition of a qualified contingent trade. A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. Other options exchanges impose the same requirement. *See, e.g.,* Cboe Options Rule 6.53C, Interpretation and Policy .06(a); MIAX Rule 518, Interpretation and Policy .01(a); and ISE Options 3, Section 14, Supplemental Material .07.

[11] Other options exchanges impose a similar requirement. *See* Cboe Options Rule 6.53C, Interpretation and Policy .06(a); *see also* MIAX Rule 518, Interpretation and Policy .01.

[12] As is the case with all orders submitted to the Exchange, a User must also designate a Clearing Member that is a Designated Give-Up pursuant to Rule 21.12 on a stock-option order submitted to the Exchange for processing.

[13] *See* proposed Rule 21.20(g)(5) and (l)(2) (the Exchange does not list stock for trading, and therefore, the stock leg would not be able to Leg). A stock-option order may only execute if the stock leg is executable at the price(s) necessary to achieve the desired net price. *See* proposed Rule 21.20(f)(2)(B).

[14] *See* current Rule 21.20(c)(1)(B) and (C) (proposed Rule 21.20(f)(2)). The System will not execute a complex order pursuant to Rule 21.20 at a net price (i) that would cause any component of the complex strategy to be executed at a price of zero; (ii) worse than the SBBO or equal to the SBBO when there is a Priority Customer Order at the SBBO; (iii) that would cause any component of the complex strategy to be executed at a price worse than the individual component prices on the Simple Book; (iv) worse than the price that would be available if the complex order Legged into the Simple Book; or (v) that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy. The proposed rule change amends the definitions of SBBO and SNBBO to provide that the NBBO of the stock component of a stock-option order is used to calculate the SBBO and SNBBO for a stock-option order. *See* proposed Rule 21.20(a); *see also* Cboe Options Rule 1.1 (definitions of national spread market (equivalent to SNBBO) and exchange spread market (equivalent to SBBO)).

[15] Even though the Exchange does not send the User an execution report immediately following execution of the option component, the Exchange disseminates the trade at that time pursuant to the OPRA Plan and creates a record to be sent to the Clearing Corporation.

[16] For example, if the stock execution venue to which the designated broker-dealer routed the stock component is experiencing system issues, the stock component may not be able to execute. Additionally, the Exchange understands certain stock execution venues apply risk controls to the stock components of QCTs, which may prevent execution of the stock components at certain prices.

[17] The Exchange will nullify the option component trade in the same manner as it currently nullifies any other trades (when nullification is permitted under the Rules). *See* Rule 20.6.

Exchange merely expands this process to all stock-option orders, as all stock-option orders must satisfy the same QCT Exemption).[18] This proposed process is also similar to that of other options exchanges.[19]

Currently, whenever a stock trading venue nullifies the stock leg of a QCT or whenever the stock leg cannot execute, the Exchange will nullify the option leg upon request of one of the parties to the transaction or on an Exchange Official's own motion in accordance with the Rules.[20] To qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time.[21] Given this requirement, if the stock component does not execute at or near the same time as the option component, it is reasonable to expect a User that submitted a stock-option order to request such nullification.[22] If the stock component does not execute, rather than require the User that submitted the stock-option order to contact the Exchange to request the nullification of the option component execution pursuant to Rule 20.6, Interpretation and Policy .04(c), the proposed rule eliminates this requirement for the submitting User to make such a request. Instead, the proposed rule change provides that the Exchange will automatically nullify the option transaction if the stock component does not execute. The Exchange believes such nullification without a request from the User is consistent with the definition of a QCT order. The proposed rule change merely automates an otherwise manual process for Users.

Additionally, the Exchange believes this automatic nullification will reduce any compliance risk for the User associated with execution of a stock-option order and lack of execution of a stock order at or near the same time.[23] The Exchange conducts surveillance to ensure a User executes the stock component of a QCT, which will also apply to QCC with Stock Orders, if the option component executed. As a result, if the stock component does not execute when initially submitted to a stock trading venue by the designated broker-dealer, a User may be subject to compliance risk if it does not execute the stock component within a reasonable time period of the execution of the option component. The proposed rule change reduces this compliance risk for Users.

If a stock-option order can execute, the System executes the buy (sell) stock leg of a stock-option order pursuant to Rule 21.20 up to a buffer amount above (below) the NBO (NBB), which amount the Exchange determines.[24] The Exchange believes that Users may be willing to trade a stock-option order with the stock leg at a price outside of the NBBO (which is permissible pursuant to the QCT exemption) of the stock leg in order to achieve the desired net price. However, the buffer may prevent execution with a stock price "too far" away from the market price, which may be inconsistent with then-current market conditions. This may ultimately prevent execution at potentially erroneous prices. This is similar to the Exchange's current fat finger protection (which will not permit a complex order to be more than a specified amount outside of the SNBBO, which will include the NBBO of the stock leg, as described above),[25] except it also applies a buffer to the individual stock leg as opposed to the net price.

The option component of a stock-option order executes in accordance with same priority principles as any other option order. For a stock-option order with one option leg, the option leg may not trade at a price worse than the individual component price on the Simple Book or at the same price as a Priority Customer Order on the Simple Book. For a stock-option order with more than one option leg, the option legs must trade at prices consistent with priority applicable to a complex order with all option legs.[26]

Proposed Rule 21.20(f)(1) states that Users may express bids and offers for a stock-option order (including a QCC with Stock Order, as discussed below) in any decimal price the Exchange determines. The option leg(s) of a stock-option order may be executed in $0.01 increments, regardless of the minimum increments otherwise applicable to the option leg(s), and the stock leg of a stock-option order may be executed in any decimal price permitted in the equity market.[27] Smaller minimum increments are appropriate for stock-option orders as the stock component can trade at finer decimal increments permitted by the equity market. Furthermore, the Exchange notes that even with the flexibility provided in the proposed rule, the individual options

[18] *See* current Rule 21.20(c)(7) (proposed Rule 21.20(l)(3)).

[19] *See, e.g.,* Cboe Options Rule 6.53C, Interpretation and Policy .06(a), which states a stock-option order will not be executed unless the stock leg is executable at the price(s) necessary to achieve the desired net price; *see also* ISE Options 3, Section14, Supplementary Material .02 (which states a "trade" of a stock-option order or stock-complex order will be automatically cancelled if market conditions prevent the execution of the stock or option leg(s) at the prices necessary to achieve the agreed upon net price); and MIAX Rule 518, Interpretation and Policy .01(b) (pursuant to which the stock components will attempt execution prior to the option components, but ultimately require both the stock and option components to execute). The proposed rule change ensures the option can trade before the stock can trade, rather than potentially execute [sic] stock component and not execute [sic] option component, which creates compliance risk for Users.

[20] *See* Rule 20.6, Interpretation and Policy .04(c).

[21] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829, 52831 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934) ("QCT Exemption Order"), which requires the execution of one component of the QCT to be contingent upon the execution of all other components at or near the same time to qualify for the exemption. In its Exemption Request, the Securities Industry Association stated that for contingent trades, the execution of one order is contingent upon the execution of the other order. SIA further stated that, by breaking up one or more components of a contingent trade and requiring that such components be separately executed, one or more parties may trade "out of hedge." *See* Letter to Nancy M. Morris, Secretary, Commission, from Andrew Madoff, SIA Trading Committee, SIA, dated June 21, 2006 ("SIA Exemption Request"), at 3.

[22] *See* QCT Exemption Order at 52831. In the SIA Exemption Request, the SIA indicated parties to a contingent transaction are focused on the spread or ratio between the transaction prices for each of the component instruments, rather than on the absolute price of any single component instrument. The SIA also noted the economics of a contingent trade are based on the relationship between the prices of the security and related derivative or security. *See* SIA Exemption Request at 2.

[23] In the SIA Exemption Request, the SIA stated that parties to a contingent trade will not execute one side of the trade without the other component or components being executed in full (or in ratio) and at the specified spread or ratio. *See* SIA Exemption Request at 2. While a broker-dealer could re-submit the stock component to a stock trading venue or execution after it initially fails to execute, there is a compliance risk that the time at which the stock component executes is not close enough to the time at which the option component executed.

[24] *See* proposed Rule 21.20(f)(2)(B).

[25] *See supra* note 15. Additionally, stock exchanges provide similar protections for execution prices of stock orders. *See, e.g.,* NASDAQ Stock Market Rule 4757(c) (which prevents stock limit orders from being accepted at prices outside of pre-set standard limits, which is based on the NBBO).

[26] *See* proposed Rule 21.20(f)(2)(B). The System does not execute a complex order pursuant to this Rule 21.20 at a net price (i) that would cause any component of the complex strategy to be executed at a price of zero; (ii) worse than the SBBO or equal to the SBBO when there is a Priority Customer Order at the SBBO, except AON complex orders may only execute at prices better than the SBBO; (iii) that would cause any component of the complex strategy to be executed at a price worse than the individual component prices on the Simple Book; (iv) worse than the price that would be available if the complex order Legged into the Simple Book; or (v) that would cause any component of the complex strategy to be executed at a price ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy. *See* proposed Rule 21.20(f)(2)(A).

[27] Other options exchanges have the same minimum increment requirements for stock-option orders. *See* Cboe Options Rule 6.53C(c)(ii); and ISE Options 3, Section 14(c)(1).

and stock legs must trade at increments allowed by the Commission in the options and equities markets.

The proposed rule change moves the provision regarding the execution of QCC with Stock Orders from current Rule 21.20(c)(7) to proposed Rule 21.20(l)(3). The proposed rule change amends this provision to provide that the QCC portion of a QCC with Stock Order may consist of a QCC Order (with one option leg) or a Complex QCC Order (with multiple option legs).[28] A QCC with Stock Order with multiple option legs will execute in the same manner as a QCC with Stock Order with one option leg. The option component of a Complex QCC with Stock Order (*i.e.,* a Complex QCC Order) will be subject to the same execution requirements as a Complex QCC Order, including the requirement that no option leg executes at a price of zero or at the same price as a Priority Customer Order in the Simple Book, that each option leg must execute at a price at or between the NBBO for the applicable series, and the execution price is better than the price of an [sic] complex order resting in the COB (unless the Complex QCC Order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order).[29]

The proposed rule change also updates an inadvertent cross-reference to Rule 21.8 regarding the execution of the option component of a QCC Order, as the option component of a QCC Order (including a Complex QCC Order) will automatically execute upon entry pursuant to Rule 21.1(d)(10) if the conditions are satisfied. The proposed rule change deletes current Rule 21.20(c)(7)(A)(ii) regarding the need to give up a Clearing Member in accordance with Rule 21.12, as all orders submitted to the Exchange (including QCC Orders) must designate a give up in accordance with Rule 21.12, making this requirement redundant. Additionally, as noted above, the proposed rule change adopts Rule 21.20, Interpretation .03, which requires a User that submits a stock-option order to designate a specific broker-dealer to which the stock components will be communicated when entering a stock-option order. Because a QCC with Stock Order is a type of a stock-option order, proposed Rule 21.20 will apply to QCC with Stock Orders (including Complex QCC with Stock Orders), and thus the Exchange proposes to delete current Rule 21.20(c)(7)(A)(iii), as it is redundant.

The proposed rule change also adds subparagraph (l)(4), which provides that if a User submits to the System a stock-option order with a stock leg to sell, the User must market the stock leg ''long,'' ''short,'' or ''short exempt'' in compliance with Regulation SHO under the Exchange Act. Additionally, the Exchange will only execute the stock leg of a stock-option order at a price permissible under Regulation SHO. If a stock-option order cannot execute, the System calculates the SBBO or SNBBO with a price for the stock leg that would be permissible under Regulation SHO, and posts the stock-option order on the COB at that price (if eligible to rest), subject to a User's instructions.[30]

Similarly, proposed subparagraph (j)(3) provides that the Exchange will only execute the stock leg of a stock-option order at a price permissible under the Limit Up-Limit Down Plan. If a stock-option order cannot execute, the System calculates the SBBO or SNBBO with a price for the stock leg that would be permissible under that Plan, and posts the stock-option order on the COB at that price (if eligible to rest), subject to a User's instructions.[31]

Current Rule 21.20, Interpretations and Policies .04 and .06 describes price protection mechanisms and risk controls applicable to complex orders. The proposed rule change moves these to Rule 21.17(b) to consolidate all price protection mechanisms and risk controls available on the Exchange into a single place within the Rules.[32] The price protection mechanisms and risk controls will apply to stock-option orders (or the options components of stock-option orders, as applicable) submitted to the Exchange. The proposed rule change adds the buy-write/married put check, which will be a price protection mechanism applicable specifically to stock-option orders.[33] If the Exchange applies the buy-write/married put check to a class, the System cancels or rejects a stock-option order to buy the stock leg and sell a call (buy a put) for the option leg with a price that is more than the strike price of the call (put) plus (minus) a buffer amount (which the Exchange determines on a class-by-class basis).[34]

The proposed rule change also amends the debit/credit price reasonability check in proposed Rule 21.17(b)(3)(B) to provide how that check will apply to stock-option orders. If the stock component of a stock-option order is to buy, the stock-option order is a debit, and if the stock component of a stock-option order is to sell, the stock-option order is a credit. Pursuant to the current debit/credit price reasonability check, if all pairs and loners are a debit (credit) (and a buy (sell) stock leg would always be a loner and thus a debit (credit), ultimately, whether the stock leg is a buy or sell would dictate whether a stock-option order is a debit or credit. Therefore, the Exchange believes this is a reasonable handling of

[28] *See* Rule 21.1(d)(10) (which describes QCC and Complex QCC Orders). Other options exchanges have similar Complex QCC with Stock order functionality. *See, e.g.,* Cboe Options Rule 6.53C, Interpretation and Policy .06(g)(1)(A) (which provides a QCC with Stock Order may have multiple option components); and ISE Options 3, Section 12(f) (which describes complex QCC with stock orders). In addition to the other changes to the QCC with Stock rule provisions described below, the proposed rule change makes nonsubstantive changes, including changes to consolidate provisions that apply to all stock-option orders in Rule 21.20, update paragraph numbering and lettering, conform cross-references, and adds certain clarifying language.

[29] *See* Rule 21.1(d)(10). The proposed rule change deletes the reference to current Rule 21.20(c)(1)(C), as that rule provides no component may execute at a price of zero or ahead of a Priority Customer Order on the Simple Book without improving the BBO of at least one component of the complex strategy. This second requirement is not necessary, because each leg of a Complex QCC must improve the price of a Priority Customer Order in any leg (and may not be worse than the NBBO of any leg), and the proposed rule change adds the requirement that no component may execute at a price of zero to proposed Rule 21.1(d)(10)(C).

[30] Specifically, Rule 201 of Regulation SHO provides that when the short sale price test is triggered for an NMS stock, a trading center (such as the Exchange) must comply with Rule 201. Other options exchanges have similar marking requirements. *See* Cboe Options Rule 6.53C, Interpretation and Policy .06(e) (which requires marking in accordance with Regulation SHO); *see also* MIAX Rule 518, Interpretation and Policy .01(b) (which requires marking and execution price in accordance with Regulation SHO); and ISE Options 3, Section 14, Supplementary Material .13 (which requires marking in accordance with Regulation SHO).

[31] Other options exchanges have similar restrictions on stock leg execution prices. *See* Cboe Options Rule 6.53C, Interpretation and Policy .06(f); *see also* MIAX Rule 518, Interpretation and Policy .01(f).

[32] The proposed rule change makes corresponding changes to the introductory language and the paragraph lettering in Rule 21.17 (including moving current price protections related to simple orders into proposed paragraph (a)) and makes corresponding changes to cross-references. The proposed rule change also adds to the maximum value acceptable price range check that it applies to auction responses, as other price protections do. Auction responses may execute in the same manner as orders, and thus application of this check to auction responses may prevent execution of an auction response at a potentially erroneous price. The proposed rule change makes no other substantive changes to the complex order price protections, and only makes nonsubstantive changes to make the language plain English, to simplify the rule provisions, and to conform the language to the corresponding C2 rules. *See* C2 Rule 6.14(b).

[33] *See* proposed Rule 21.17(b)(9).

[34] The proposed buy-write/married put price check is similar to the parity price protection in MIAX Rule 518, Interpretation and Policy .01(g).

stock-option orders designed to help mitigate potential risks associated with stock-option orders trading at prices that are potentially erroneous. Additionally, the proposed rule change deletes the exception for complex orders with European-style exercise. The Exchange no longer believes this exception is necessary and will expand this check to index options with all exercise styles.

The proposed rule change adds detail to the complex order drill-through protection in proposed Rule 21.17(b)(6), to provide that if the SBBO changes while an order rests on the COB at the drill-through price prior to the end of the specified time period, if the complex order cannot Leg, and the new SBO (SBB) crosses the drill-through price, the System changes the displayed price of the buy (sell) complex order to the new SBO (SBB) minus (plus) $0.01, and the order is not cancelled at the end of the time period. This proposed change codifies current functionality, and merely permits an order to remain on the COB since the Exchange's market reflects interest to trade (but the order is not currently executable due to Legging Restrictions) that was not there was not at the beginning of the time period. This provides complex orders with additional execution opportunities prior to cancellation.

The proposed rule change makes various changes to Rule 21.20 regarding complex orders to simplify the Rule, make certain clarifications, codify certain functionality in the Rule, delete redundant provisions, re-organize the Rule, and conform the rule text to the corresponding C2 rule regarding complex orders.[35] The proposed rule change moves the provision stating that trading of complex orders is subject to all other Rules applicable to the trading of orders, unless otherwise provided in Rule 21.10 from current paragraph (c) to the introduction of Rule 21.20. The proposed rule change alphabetizes the defined terms in Rule 21.20(a), makes nonsubstantive changes to definitions to conform the rule language to that of corresponding definitions in C2 Rule 6.13, and removes the paragraph lettering.

The proposed rule change amends the definition of ''BBO'' to mean the best bid or offer disseminated by the Exchange. The term BBO generally refers to the prices of quotes the Exchange sends to OPRA. While the bids and offers of most orders on the Simple Book are sent to OPRA, certain ones (such as the bids and offers of AON orders, which are not displayed on the Simple Book)[36] are not disseminated. The proposed rule change updates the term BBO to accurately reflect that it represents displayed, disseminated interest.[37]

The proposed rule change amends the definition of ''complex order'' to provide that it is an order involving the concurrent purchase and/or sale of two or more different series in the same class. This merely accounts for the fact that a complex order may be in an index class (for which there is an underlying index) as well as an equity option class (for which there is an underlying security).[38] The proposed rule change also deletes the Exchange's flexibility to designate in which classes complex orders may be entered and that the Exchange will determine the permissible number of legs on a class-by-class basis. Currently, the Exchange makes complex order functionality available in all classes that trade on the Exchange and has the same limit on the number of legs that may be submitted for a complex order in all classes. The proposed rule change codifies in proposed paragraph (b) that complex orders are available in all classes listed for trading on the Exchange, which is consistent with this current definition of complex order, as well as current paragraph (b), which permits the Exchange to determine when complex orders are available for use on the Exchange.

The proposed rule change adds to paragraph (b) that Users may designate complex orders as Attributable or Non-Attributable. These order instructions are defined in Rule 21.1(c) and are currently available for complex orders. The proposed rule change codifies in the Rules that these order instructions are available for complex orders. This provides Users with additional functionality and flexibility with respect to complex order entry that they currently have for simple orders. The proposed rule change is the same as the C2 rule, which similarly permits Users to designate complex orders as Attributable or Non-Attributable.[39]

The proposed rule change moves the provision regarding the Exchange determining which Capacities[40] are eligible for entry onto the COB from current paragraph (c) to proposed paragraph (b), which includes all other information regarding the Exchange's authority to limit the availability of certain orders with respect to complex order functionality.

The proposed rule change moves the provisions regarding COA eligibility from current subparagraph (d)(1) and Interpretation and Policy .02 to the definition of a COA-eligible order in current paragraph (b)(2) (proposed paragraph (b)) so that all terms regarding COA eligibility of a complex order are included in the same place within the rule. The proposed rule change clarifies in the definition of complex only order in current subparagraph (b)(1) (proposed paragraph (b)) that complex [sic] orders may not leg into the Simple Book (which is consistent with the definition that currently states these orders will only check against the COB).[41] This is also consistent with the definition of COA-Eligible and Do-Not-COA Order in the C2 Rules.[42] The proposed rule change makes no substantive changes to what orders will and will not initiate a COA.

The proposed rule change clarifies in current subparagraph (b)(3) (proposed paragraph (b)) that if a complex order would execute against a complex order in the COB with an MTP Modifier with the same Unique Identifier, the System handles the complex orders with an MTP Modifier as described in Rule 21.1(g). This is consistent with current functionality and adds detail to the Rules of how the System handles these orders. This is also consistent with the definition of Complex Orders with MTP Modifiers in the C2 Rules.[43] The proposed rule change makes no substantive changes to how the System handles complex orders with MTP Modifiers.

The proposed rule change alphabetizes the types of complex orders available on the Exchange in paragraph (b). The changes described above, which do not modify any existing functionality and merely add detail and clarity to the Rules. The proposed rule makes additional nonsubstantive changes to these definitions, including to make them plain English, to reorganize certain provisions, to simplify the language, update paragraph lettering and numbering and cross-references, and to

[35] *See* C2 Rule 6.13. The proposed rule change also modifies a corresponding cross-reference in Rule 21.1(d)(10)(E).

[36] *See* Rule 21.1(d)(4).

[37] This proposed definition of BBO is identical to C2's definition of BBO. *See* C2 Rule 1.1.

[38] This is consistent with the definition of complex order in C2 Rule 1.1.

[39] *See* C2 Rule 6.13(b).

[40] The Exchange notes the term ''Capacity'' refers to origin code. The Exchange is submitting a separate rule filing to add the definition of Capacity, as well as the different Capacities available on the Exchange. This is the term currently used in C2 Rules when referring to origin code. *See, e.g.,* C2 Rule 6.13(b).

[41] The Commission notes that proposed paragraph (b) provides that complex *only* orders may not leg into the Simple Book (emphasis added).

[42] *See* C2 Rule 6.13(b).

[43] *See* C2 Rule 6.13(b).

conform them to other portions of the rule and to the corresponding C2 rule.[44]

The proposed rule change moves the provisions regarding minimum increments and trade prices for complex orders from current paragraph (c) (which is primarily about the COB Opening Process) to proposed paragraph (f)(1) and (2), respectively. The proposed rule change makes no substantive changes to these provisions, and makes nonsubstantive changes, including to make them plain English, to reorganize certain provisions, to simplify the language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[45]

The proposed rule change consolidates all provisions regarding the COB Opening Process into proposed paragraph (c). Current subparagraph (c)(2)(A) becomes the introductory sentence for paragraph (c). The provisions regarding when Users may submit complex orders for participation in the COB Opening Process, as well as when the Exchange disseminates messages with information regarding the opening process, move from current subparagraph (c)(2)(A) to proposed subparagraph (c)(1). Current subparagraph (c)(2)(B) states the COB Opening Process will commence when all legs of the complex strategy are open on the Simple Book. However, pursuant to proposed subparagraph (c)(2), the System initiates the COB Opening Process for a complex strategy after a number of seconds (determined by the Exchange) after all legs of the strategy in the Simple Book are open for trading.[46] The delay provides time for the market prices to stabilize before trading may begin.[47] This is consistent with current functionality as set forth in the technical specifications for the COB opening process available on the Exchange's website.[48] The Exchange believes this is a more accurate description of the time when the COB opens.[49] The rule provisions regarding how the Exchange determines the COB Opening Price, how the Exchange transitions to Regular Trading, and what happens if there are no matching complex orders or no valid COB Opening Price move from current subparagraphs (c)(2)(C) through (D) to proposed subparagraphs (c)(2)(A) through (C). The proposed rule change makes no substantive changes to how the COB opening process occurs, and makes nonsubstantive changes, including to make them plain English, to reorganize certain provisions, to simplify the language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[50]

The proposed rule change moves the provisions in current subparagraph (c)(2)(E) regarding prices for complex strategy executions to proposed paragraph (f)(2) (along with the provisions in current (c)(1)(B) and (C) as discussed above) and (3) so that all provisions regarding prices at which complex orders may execute in any manner are included in a single place within Rule 21.20. The proposed rule change makes no substantive changes to the prices at which complex orders may execute, and makes nonsubstantive changes, including to make them plain English, to reorganize certain provisions, to simplify the language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[51]

The proposed rule change moves the provision regarding incoming complex orders with prices that do not satisfy the pricing requirements described in the previous paragraph from current subparagraph (c)(2)(E) to proposed subparagraph (d)(5) and (e), to include all provisions regarding System handling of complex orders that are unable to execute (either following a COA or upon submission to the COB, respectively) in a single place with in Rule 21.20. The proposed rule change makes no substantive changes to this provision.

The proposed rule change moves provisions regarding restrictions on the Legging[52] of complex orders into the Simple Book from current paragraph (c)(2)(F) to proposed paragraph (g). The proposed rule change makes no substantive changes to the Legging restrictions on complex orders, and makes nonsubstantive changes, including to make them plain English, to reorganize certain provisions, to simplify the language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[53]

The proposed rule change moves and combines the provisions regarding initial and continual evaluation of complex orders from current subparagraphs (c)(1)(G) and (c)(5) to proposed paragraph (i) so that all provisions regarding evaluation of complex orders are included in a single place and in a simple manner within Rule 21.20. The proposed rule change makes no substantive changes to the evaluation process, and makes nonsubstantive changes to these provisions, including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[54]

The proposed rule change moves the provisions in subparagraph (c)(4)(A) and (B) regarding the repricing of complex orders on the COB in certain situations and the handling of Post Only complex orders that lock or cross a resting complex order in the COB or the then-current opposite side SBBO to proposed subparagraph (h)(1). The proposed rule change modifies the reference to applicable price protections in current subparagraph (c)(4)(B) to the drill-through protection in proposed subparagraph (h)(1), as this is the only applicable price protection in the context of this Rule. The proposed rule change moves current subparagraph (c)(4)(C) to proposed subparagraph (h)(2). The proposed rule change deletes the remainder of current subparagraph (c)(4) regarding the managed interest process, as the provisions in that subparagraph are covered in various other parts of Rule 21.20 (currently and as proposed), including proposed paragraphs (d) through (h),[55] making

[44] *See* C2 Rule 6.13(b).

[45] *See* C2 Rule 6.13(f). The Exchange notes C2 has no Priority Customer overlay, and thus has different execution price requirements regarding components of complex orders with respect to the Simple Book.

[46] *See* proposed Rule 21.20(c)(2).

[47] The Exchange notes it applies a similar delay after occurrence of the opening rotation trigger for the simple market opening auction process. *See* Rule 21.7(d)(1).

[48] *See http://cdn.cboe.com/resources/membership/US_Options_Opening_Process.pdf.*

[49] This is also the same as the COB opening process for C2. *See* C2 Rule 6.13(c)(2).

[50] *See* C2 Rule 6.13(c).

[51] *See* C2 Rule 6.13(f).

[52] The proposed rule change also adds to Rule 21.20(a) a defined term for Legging, which is defined in proposed paragraph (g) as a complex order executing against orders an quotes in the Simple Book if it can execute in full or in a permissible ratio and if it has [sic] more than a maximum number of legs (which the Exchange determines on a class-by-class basis and may two, three, or four). This is consistent with current Rule 21.20(c)(1)(F) and merely adds a defined term. The Commission notes that such execution occurs if the complex order has *no more than* a maximum number of legs (emphasis added).

[53] *See* C2 Rule 6.13(g).

[54] *See* C2 Rule 6.13(i).

[55] For example, the first portion of current subparagraph (c)(5)(A) describes the System evaluation of an order and whether it is COA-eligible, can execute against the COB or Leg into the Simple Book. As discussed above, this is described in proposed paragraph (g). Additionally, current subparagraph (c)(5)(A) describes pricing

Continued

these provisions of the managed interest process redundant. The proposed rule change makes no substantive changes to the evaluation process, and makes nonsubstantive changes to these provisions, including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[56]

The proposed rule change deletes current subparagraph (c)(4)(A), as proposed subparagraph (f)(2)(A) includes a provision that requires a complex order to execute at a price at least equal to the SBBO (*i.e.,* the bids and offers established in the marketplace that are no better than the bids or offers comprising the complex order price) or better than the SBBO when there is a Priority Customer Order at the SBBO,[57] and thus this provision is redundant. The proposed rule change moves the provision in current subparagraph (c)(4)(B) to proposed paragraph (e), which describes the allocation and priority in which a complex order may execute against other interest. The proposed rule change does not change the priority order in which, or the prices at which, complex orders currently execute. The proposed rule change makes nonsubstantive changes to these provisions, including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rules.[58]

The proposed rule change moves the description of how a non-COA-eligible order will be handled from current subparagraph (c)(5)(D) to proposed paragraph (e). The proposed rule change deletes current subparagraph (c)(5)(D)(i), as the definitions of times-in-force that are not allowed to rest in the COB (for example, an immediate-or-cancel order is defined as being cancelled if it does not execute upon entry) include that fact, making this provision redundant. The proposed rule change makes no substantive changes to how the System handles non-COA-eligible orders. The proposed rule change makes nonsubstantive changes to these provisions, including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[59]

The proposed rule change deletes current subparagraph (c)(6)(A) regarding complex market orders that may initiate a COA, because the definition of COA-eligible in proposed paragraph (b) permits market orders to be designated as COA-eligible (there is no prohibition on a User from designating a market order as COA-eligible), and because proposed subparagraph (d)(1) describes the auction price that will be used for a COA-eligible market order. Therefore, this provision is redundant. The proposed rule change deletes current subparagraph (c)(6)(B) regarding complex market orders that do not initiate a COA, because those will be handled in the same manner as any do-not-COA order pursuant to proposed paragraph (e), making this provision redundant. The proposed rule change makes no substantive changes to how the System handles complex market orders. The proposed rule change makes nonsubstantive changes to these provisions, including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[60]

The proposed rule change clarifies in proposed subparagraph (d)(1) that the COA price for a complex order may be the drill-through price if the order is subject to the drill-through protection in Rule 21.17(b). This is consistent with current functionality and the drill-through protection, which ensures that a complex order will not execute at a price too far away from the SNBBO. The current Rule states the price of a COA is subject to applicable price protections. However, the only applicable one is the drill-through protection, so the Exchange believes the proposed rule change provides additional specificity consistent with the current Rule.

The proposed rule change moves the provisions regarding when a COA may terminate early from current subparagraph (d)(5)(C) to proposed subparagraph (d)(3) so that all provisions regarding the length of time for which a COA lasts are included in the same place within Rule 21.20. The proposed rule change clarifies in subparagraph (d)(4)(B) that the System aggregates the size of COA Responses submitted at the same price for an EFID, and caps the size of the aggregated COA Responses at the size of the COA-eligible order. Current subparagraph (d)(4) permits multiple COA Responses from the same Member. The proposed rule change is consistent with current System entry requirements for COA Responses, and the proposed rule change merely adds this detail to the Rules. The System aggregates the size of COA Responses submitted at the same price for an EFID, and caps the size of the aggregated COA Responses at the size of the COA-eligible order. This provision prevents Users from taking advantage of a pro-rata allocation by submitting responses larger than the COA-eligible order to obtain a larger allocation from that order. The proposed rule change in subparagraph (d)(4)(C) that provides that a modification of a COA Response to decrease its size will not result in loss of priority, as that is consistent with current the current Rule and System functionality.[61] The Exchange believes decreasing the size of a COA Response (similar to decrementation of an order or quote after partial execution), should not impact priority, as such a modification would potentially decrease the allocation to that response. The proposed rule change clarifies that COA Responses may only execute against the COA-eligible order for the COA to which a User submitted the COA Response, which is consistent with the current rules that require COA Responses to include a COA auction ID for the COA to which the User is submitting the COA Responses.

The proposed rule change states that unexecuted COA Responses are cancelled at the conclusion of the COA rather than immediately if they are not executable based on the price of the COA. The Exchange believes this proposed change will ensure that all Users participating in COAs have the same information regarding COAs if the Exchange determines to not include the price of a COA on the COA notification message pursuant to proposed subparagraph (d)(1). If the Exchange determines to not include the price of a

requirements for complex orders, which are included in paragraph (f), as described above. Current subparagraph (c)(5)(C) regarding whether an order is determined to be COA-eligible (and thus initiates a COA) is included in proposed subparagraph (d)(1) and paragraph (e).

[56] *See* C2 Rule 6.13(h).

[57] Proposed paragraph (e) clarifies that a complex order must execute against any Priority Customer orders in the Simple Book at the same price, which is consistent with the current Rule that a complex order must improve the SBBO if there is a Priority Customer order at the BBO of any component.

[58] *See* C2 Rule 6.13(e) and (f).

[59] *See* C2 Rule 6.13(e).

[60] *See* C2 Rule 6.13(b), (d), and (e).

[61] *See* current subparagraph (d)(4).

COA on the COA notification message pursuant to proposed subparagraph (d)(1), rejection of unmarketable COA Responses may provide the submitting User with the ability to determine the COA price, which was not available to other Users.

The proposed rule change deletes current subparagraph (d)(6) regarding COA pricing, as it is redundant of the rule provisions in proposed (f)(2). The proposed rule change moves the provision from current subparagraph (d)(7) regarding the allocation of COA-eligible orders to proposed subparagraph (d)(5).

The proposed rule change adds detail to the current rule provisions regarding COAs, as well as codifies current functionality and consolidates all provisions regarding COAs within a single paragraph in Rule 21.20 (including moving rule provision regarding concurrent COAs from current Interpretation and Policy .02 to proposed subparagraph (d)(2)). The proposed rule change makes no changes to how COAs occur or how the System allocates orders at the conclusion of a COA. The proposed rule change makes nonsubstantive changes to the COA provisions in paragraph (d), including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[62]

The proposed rule change adds proposed subparagraph (h)(3), which states if there is a zero NBO for any leg, the System replaces the zero with a price $0.01 above NBB to calculate the SNBBO, and complex orders with any buy legs do not Leg into the Simple Book. If there is a zero NBB, the System replaces the zero with a price of $0.01, and complex orders with any sell legs do not Leg into the Simple Book. If there is a zero NBB and zero NBO, the System replaces the zero NBB with a price of $0.01 and replaces the zero NBO with a price of $0.02, and complex orders do not Leg into the Simple Book. The SBBO and SNBBO may not be calculated if the NBB or NBO is zero (as noted above, if the best bid or offer on the Exchange is not available, the System uses the NBB or NBO when calculating the SBBO). As discussed above, permissible execution prices are based on the SBBO. If the SBBO is not available, the System cannot determine permissible posting or execution pricing for a complex order (which are based on the SBBO), which could reduce execution opportunities for complex orders. If the System were to use the zero bid or offer when calculating the SBBO, it may also result in executions at erroneous prices (since there is no market indication for the price at which the leg should execute). For example, if a complex order has a buy leg in a series with no offer, there is no order in the leg markets against which this leg component could execute. This is consistent with current System functionality, and the proposed rule change is codifying this detail in the Rules. This is also consistent with the current Rule 21.20(c)(1)(C) and proposed Rule 21.20(f)(2) that states complex order executions are not permitted if the price of a leg would be zero. Additionally, this is similar to the proposed rule change described above to improve the posting price of a complex order by $0.01 if it would otherwise lock the SBBO. The proposed rule change is a reasonable process to ensure complex orders receive execution opportunities, even if there is no interest in the leg markets. Additionally, a User may always cancel a complex order if the User does not wish to have its order rest in the COB at that price. This proposed rule change is also identical to the corresponding C2 Rule.[63]

The proposed rule change moves provisions regarding how the System handles complex orders during trading halt from Interpretation and Policy .05 to proposed paragraph (k). The proposed rule change makes no substantive changes to how the System handles complex orders during a trading halt, and makes nonsubstantive changes to these provisions, including to make them plain English, to reorganize certain provisions, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[64]

The proposed rule change makes no substantive changes to the rules regarding how complex orders execute, including rules related to priority. Complex orders will continue to trade in the same manner as they do today. The proposed rule change makes nonsubstantive changes to these provisions, including to make the rule text plain English, reorganize the Rule, simplify the language and delete redundant provisions, update paragraph lettering and numbering and cross-references, and conform to the corresponding C2 rule.[65]

Throughout Rule 21.20, the proposed rule change replaces references to Members with Users. An Options Member means a firm or organization that is registered with the Exchange pursuant to Chapter XVII of the Rules for purposes of participating in options trading on EDGX Options as an ''Options Order Entry Firm'' or ''Options Market Maker.''[66] A User is any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.[67] While the Exchange currently has no Sponsored Participants, a Sponsored Participant would have the ability to submit complex orders. Therefore, the term ''User'' in the context of Rule 21.20 is more appropriate.

The proposed rule change amends Rule 21.1(d)(10) to delete the cross-reference to Rule 21.20(c)(1)(C), which the Exchange proposes to move as described above, and replaces it to state that no option leg may execute at a price of zero. The Rule currently provides that no option leg may execute at the same price as a Priority Customer Order in the Simple Book, which makes the other provision of Rule 21.20(c)(1)(C) unnecessary to reference. This proposed change makes no change to the functionality of Complex QCC Orders.

The proposed rule change deletes provisions that state the Exchange will make certain determinations and announcements via Regulatory Circular.[68] Pursuant to Rule 16.3, the Exchange announces all determinations it makes pursuant to the Rules via specifications, Notices, or Regulatory Circulars with appropriate advanced notice, which will be posted on the Exchange's website, or as otherwise provided in the Rules; electronic message; or other communication method as provided in the Rules. All determinations the Exchange makes pursuant to Rule 21.20 will be made in accordance with Rule 16.3.

The proposed rule change makes additional nonsubstantive changes throughout Rule 21.20, including to make them plain English, to reorganize certain provisions and consolidate

[62] *See* C2 Rule 6.13(d).

[63] *See* C2 Rule 6.13(h)(3).

[64] *See* C2 Rule 6.13(k).

[65] *See* C2 Rule 6.13(d) and (e). Note C2 has different priority provisions, as it does not have Priority Customer priority and instead prioritizes all orders and quotes on the Simple Book (and allocates them pursuant to the applicable allocation algorithm pursuant to C2 Rule 6.12) ahead of all complex orders.

[66] *See* Rule 16.1.

[67] *See* Rule 16.1.

[68] *See* Rules 21.17 (in the introductory paragraph and proposed paragraph (b)) and 21.20 (various provisions).

related provisions within a single portion of the Rule, to simplify the language and delete redundant language, update paragraph lettering and numbering and cross-references, and to conform them to other portions of the rule and to the corresponding C2 rule.[69] The proposed rule change makes no changes to the allocation or priority of complex orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[70] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[71] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[72] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change benefits investors and promote just and equitable principles of trade because it provides investors with greater opportunities to manage risk through trading of additional types of complex orders. The proposed stock-option order and Complex QCC with Stock Order functionality are each optional for Users and will help them facilitate execution of components of a QCT. Currently, if a User wanted to execute a QCT, it could do so by entering the options components on the Exchange and separately executing the stock component of the QCT on another venue. Users will have the option to continue do this, or build their own technology to electronically communicate the stock component of any QCT to a broker-dealer for execution. However, the addition of stock-option order and Complex QCC with Stock Order functionality will provide Users with an optional, alternative means to execute the stock component of their QCTs.

The Exchange believes these proposed order types will reduce Users' compliance burden because it [sic] allows for the automatic submission of the stock component of a QCT in connection with the execution of the options component(s) as a stock-option order on the Exchange. The proposed functionality also provides benefits to the Exchange by establishing an audit trail for the execution all option components of a QCT with [sic] a reasonable period of time of each other, and of the stock component of a QCT within a reasonable period of time after the execution of the option components. The proposed rule change further reduces Users' compliance risk by providing that the Exchange will, in addition to cancelling the stock component if the option component cannot execute, nullify any option component execution when the stock component does not execute without a request from the User. Nullification of the option trade is consistent with the requirement that a User must execute the stock component of a QCT within a reasonable period of time after executing the option component on the Exchange. The proposed rule change simply eliminates the requirement that one party to the transaction request nullification of the option component trade before the Exchange nullifies the option trade, because such nullification is consistent with the definition of QCT. The proposed rule change merely automates a process that Users can manually do today. As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time.[73] Since the purpose of stock-option orders is for all components to trade at or near the same time, if the stock component does not execute at or near the same time as the option component(s), it is reasonable to expect a User that submitted one of these orders to request such nullification to avoid any compliance risk associated with execution of the option components of these orders and lack of execution of a stock order at or near the same time.[74] This proposed execution process is the same process the Exchange currently uses to execute QCC with Stock Orders, which are a type of stock-option order (and thus the Exchange merely expands this process to all stock-option orders, as all stock-option orders must satisfy the same QCT Exemption).[75] This proposed process is also similar to that of other options exchanges.[76]

The Exchange conducts surveillance to ensure a User executes the stock component of a QCT, which will also apply to all of the proposed functionality, if the option component executed. As a result, if the stock component does not execute when initially submitted to a stock trading venue by the designated broker-dealer, a User may be subject to compliance risk if it does not execute the stock component within a reasonable time period of the execution of the option component. The proposed rule change reduces this compliance risk for Users. The Exchange therefore believes the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest.

The Exchange believes the proposed stock leg execution buffer, debit/credit reasonability check amendment, and buy-write/married put check for stock-option orders (in addition to the other existing price protection mechanisms applicable to complex orders that will apply to stock-option orders) will protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering orders at clearly unintended prices and orders trading at prices that are extreme and potentially erroneous, which may likely have resulted from human or operational error. The Exchange believes these proposed price protection mechanisms will remove impediments to and perfects the mechanisms of a free and open market and a national market system, because they are similar to price protection mechanisms available on other exchanges. The proposed buy-write/married put price check is similar to the parity price protection in MIAX Rule 518, Interpretation and Policy .01(g). The proposed application of the debit/credit price reasonability check to stock-option orders is similar to Cboe Options Rule 6.53C, Interpretation and Policy .08(c). The proposed stock leg buffer is similar to the Exchange's current fat finger protection (which will not permit a complex order to be more than a specified amount outside of the SNBBO, which will include the NBBO of the stock leg, as described above), except it also applies a buffer to the

[69] *See* C2 Rule 6.13.

[70] 15 U.S.C. 78f(b).

[71] 15 U.S.C. 78f(b)(5).

[72] *Id.*

[73] *See supra* notes 10 and 18.

[74] *See supra* note 12.

[75] *See* current Rule 21.20(c)(7) (proposed Rule 21.20(l)(3)).

[76] *See supra* note 19.

individual stock leg as opposed to the net price. Additionally, stock exchanges provide similar protections for execution prices of stock orders.[77]

The proposed rule change to require Users to mark stock-option orders as required by Regulation SHO, and to execute stock-option orders at prices permitted by Regulation SHO (a Regulation adopted pursuant to the Act) and the Limit Up-Limit Down Plan (Regulation NMS Plan adopted pursuant to the Act), promote just and equitable principles of trade, as they are intended to ensure the Exchange will execute stock-option orders in accordance with these regulations, which are intended to reduce the negative impacts of sudden, unanticipated price movements in NMS stocks and protect investors.

The proposed rule change would also provide Users with access to stock-option order functionality and Complex QCC with Stock order functionality that is generally available on options exchanges, including Cboe Affiliated Exchanges, which may result in the more efficient execution of QCTs and provide Users with additional flexibility and increased functionality on the Exchange's System.[78] Additionally, the proposed functionality is consistent with the QCT exemption previously approved by the Commission.[79] The Exchange believes this consistency will promote a fair and orderly national options market system. The proposed rule change does not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on Cboe Affiliated Exchanges (or other options exchanges).

The proposed rule change to codify the delay for a complex strategy to open after the legs have opened will benefit investors, as it will provide time for the market prices to stabilize before trading may begin in complex strategies.[80] This is consistent with current functionality as set forth in the technical specifications for the COB opening process available on the Exchange's website.[81] The Exchange believes this is a more accurate description of the time when the COB opens, and this additional transparency will benefit investors. Additionally, another options exchange has the same delay for its COB opening process.[82]

The proposed rule change to codify current functionality in the drill-through complex order protection will benefit investors, as it provides additional transparency in the Rules. Additionally, the proposed rule change provides complex orders with additional execution opportunities rather than cancels them when market prices reflect interest to trade at the price, but the order is not currently executable due to Legging Restrictions. Additionally, this functionality is the same as the drill-through complex order protection of another options exchange.[83]

The proposed rule change to codify current functionality regarding how the System determines possible execution prices for complex orders if the NBB or NBO of any component leg is zero will benefit investors, because it is a reasonable process provide complex orders with execution opportunities, even if there is no interest in the leg markets in a manner consistent with the pricing requirements of complex orders. A User may always cancel a complex order if the User does not wish to have its order rest in the COB at a price determined as set forth in the proposed rule change. Additionally, another options exchange offers the same functionality.[84]

The proposed rule change to permit Users to designate complex orders as Attributable or Non-Attributable will benefit investors, as it codifies current functionality and thus provides investors with transparency in the Rules. These instructions merely apply to information that is displayed for the orders (in the discretion of the User), and have no impact on the execution of complex orders. The Exchange believes this provides Users with greater control and flexibility over the manner in which they may submit complex orders, and provides them with functionality that is currently available for simple orders. Additionally, another options exchange offers investors the ability to designate complex orders as Attributable or Non-Attributable.[85]

The proposed rule change is generally intended to align system functionality currently offered by the Exchange with Cboe Options functionality in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes, and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. When Cboe Options migrates to the same technology as that of the Exchange and other Cboe Affiliated Exchanges, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges. Differences remain to the extent necessary to conform to the Exchange's current rules, retain intended differences based on the Exchange's market model, or make other nonsubstantive changes to simplify, clarify, eliminate duplicative language, or make the rule provisions plain English. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

To the extent a proposed rule change is based on an existing Cboe Affiliated Exchange rule, the language of Exchange Rules and Cboe Affiliated Exchange rules may differ to [sic] extent necessary to conform with existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable EDGX rule. Where possible, the Exchange has substantively mirrored Cboe Affiliated Exchange rules, because consistent rules will simplify the regulatory requirements and increase the understanding of the Exchange's operations for participants on other Cboe Affiliated Exchanges that are also EDGX Users. The proposed rule change would provide greater harmonization between the rules of the Cboe Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that the proposed amendments will contribute to the protection of investors and the public interest by making the

[77] *See, e.g.,* NASDAQ Stock Market Rule 4757(c) (which prevents stock limit orders from being accepted at prices outside of pre-set standard limits, which is based on the NBBO).

[78] *See, e.g.,* Cboe Options Rule 6.53C and Interpretation and Policy .06; MIAX Rule 518; and ISE Options 3, Section 14 (stock-option order functionality); and Cboe Options Rule 6.53C, Interpretation and Policy .06(g); and ISE Options 3, Section 12(f) (Complex QCC with Stock functionality).

[79] *See* QCT Exemption Order.

[80] The Exchange notes it applies a similar delay after occurrence of the opening rotation trigger for the simple market opening auction process. *See* Rule 21.7(d)(1).

[81] *See http://cdn.cboe.com/resources/membership/US_Options_Opening_Process.pdf.*

[82] *See* C2 Rule 6.13(c)(2).

[83] *See* C2 Rule 6.14(b)(6).

[84] *See* C2 Rule 6.13(h)(3).

[85] *See* C2 Rule 6.13(b).

Exchange's rules easier to understand. Where necessary, the Exchange has proposed language consistent with the Exchange's operations on EDGX technology, even if there are specific details not contained in the current structure of EDGX rules. The Exchange believes it is consistent with the Act to maintain its current structure and such detail, rather than removing such details simply to conform to the structure or format of EDGX rules, again because the Exchange believes this will increase the understanding of the Exchange's operations for all Users of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed stock-option order or Complex QCC with Stock Order functionality will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Stock-option orders and Complex QCC with Stock orders facilitate Users' compliance with the requirements associated with executing QCTs, and are not designed to impose any unnecessary burden on competition. These proposed order types will be available to all Users on a voluntary basis, and Users are not required to use either order type when executing QCTs. The proposed rule change has no impact on Users that elect to execute QCTs without using the proposed functionality. Those Users may continue to execute QCTs in the same manner as they do today by entering an option order on the Exchange and separately executing the stock component of the QCT another venue. A User can also build its own technology to electronically communicate the stock component of any QCT to a broker-dealer for execution.

For Users that elect to use proposed functionality to execute QCTs, the proposed rule change reduces those Users' compliance burdens to satisfy their obligation to execute all of the components of a QCT at or near the same time, as this functionality provides an automated means for satisfying this obligation. The proposed functionality will be available to all Users either [sic] through a User's electronic connection to the Exchange.

The Exchange does not believe stock-option orders or Complex QCC with Stock Order functionality will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it is consistent with the QCT exemption previously approved by the Commission.[86] Additionally, the proposed functionality is similar to functionality offered by other options exchanges.[87]

The Exchange does not believe the proposed stock leg execution buffer, debit/credit reasonability check amendment, and buy-write/married put check for stock-option orders will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. These proposed price protection mechanisms will apply to stock-option orders of all Users in the same manner. The Exchange does not believe these price protection mechanisms will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because they are similar to price protection mechanisms available on other exchanges.[88] These price protection mechanisms are intended to prevent executions of stock-option orders at potentially erroneous prices.

The Exchange does not believe the proposed rule change to permit Users to designate complex orders as Attributable or Non-Attributable will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because this proposed rule change codifies existing functionality. These designations will be available to all Users, and use of these designations will be voluntary. The Exchange does not believe the proposed rule change to permit Users to designate complex orders as Attributable or Non-Attributable will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because another Exchange makes these designations available for complex orders.[89]

The Exchange does not believe the proposed changes to the complex order drill-through, the pricing of orders when the NBBO in a leg of a complex strategy is zero, and to the COB Opening Process (to delay the opening of a complex strategy for a time period after the legs open) will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because these changes codify existing functionality. They apply in the same manner complex orders of all Users in the same manner. The Exchange does not believe these proposed rules changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because they are the same as the rules of another options exchange.[90]

The proposed nonsubstantive changes to the Rules will have no impact on competition, as they do not modify any functionality. Rather, these proposed changes add clarity and transparency to the Rules and conform rule language with the corresponding rules of a Cboe Affiliated Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[91] and Rule 19b–4(f)(6)[92] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

[86] *See* QCT Exemption Order.

[87] *See* Cboe Options Rule 6.53C; ISE Options 3, Sections 12(f) and 14, and Supplementary Material .02 and .07; and MIAX Rule 518.

[88] *See* MIAX Rule 518, Interpretation and Policy .01(g) (buy-write/married put check); Cboe Options Rule 6.53C, Interpretation and Policy .08(c) (debit/credit price reasonability check to stock-option orders); and NASDAQ Stock Market Rule 4757(c) (which prevents stock limit orders from being accepted at prices outside of pre-set standard limits, which is based on the NBBO).

[89] *See* C2 Rule 6.13(b).

[90] *See* C2 Rules 6.13(c)(2) (COB Opening Process) and (h)(3) (pricing of orders when the NBBO in a leg of a complex strategy is zero); and 6.14(b)(6)(A) (complex order drill-through).

[91] 15 U.S.C. 78s(b)(3)(A).

[92] 17 CFR 240.19b–4(f)(6).

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–CboeEDGX–2019–039 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–CboeEDGX–2019–039. 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–CboeEDGX–2019–039 and should be submitted on or before August 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15135 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86359; File No. SR–ICEEU–2019–010]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change to Clearing Membership Policy

July 11, 2019.

## I. Introduction

On May 13, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'') 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 its Clearing Membership Policy. The proposed rule change was published for comment in the **Federal Register** on May 28, 2019.[3] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description of the Proposed Rule Change

ICE Clear Europe's proposed rule change would make three amendments to its Clearing Membership Policy.[4]

First, the proposed rule change would specify that applications for membership are formally considered and, as appropriate, approved and rejected by, the Executive Risk Committee, through a delegation of authority from the ICE Clear Europe Board of Directors, rather than the F&O and CDS Product Risk Committees (collectively, the ''Product Risk Committees''). The proposed rule change would also specify that the Product Risk Committees would be notified of approved applications. The Executive Risk Committee is made up of ICE Clear Europe management and advises management on all key aspects of risk management and produces proposals for review by the Board Risk Committee, Product Risk Committees, and ICE Clear Europe Board, as appropriate.[5] The Product Risk Committees are made up of appointees nominated by ICE Clear Europe's Clearing Members.[6]

Second, the proposed rule change would add a requirement that a person applying to become a CDS Clearing Member (an ''Applicant'') prove its ability to determine and submit end-of-day prices for CDS instruments to fulfill the pricing capabilities requirements set out in ICE Clear Europe's CDS End-Of-Day Price Discovery Policy. The proposed rule change would further specify how ICE Clear Europe's Clearing Risk Department would review and determine Applicants' pricing capabilities. Thus, the proposed rule change would provide the Executive Risk Committee, as the delegated committee responsible for approving or rejecting an Applicant, with authority to reject an Applicant that cannot demonstrate such pricing capabilities.

Finally, the proposed rule change would add an explicit requirement that, in evaluating applications for membership, the Clearing Risk Department consider the performance of Applicants in a Default Management Test and review Applicants' internal policies and procedures to assess the efficacy of their default management process. Thus, the proposed rule change would provide the Executive Risk Committee, as the delegated committee responsible for approving or rejecting an Applicant, with authority to reject an Applicant that cannot demonstrate the efficacy of its default management process.

## III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules

---

[93] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 85908 (May 21, 2019), 84 FR 24573 (May 28, 2019) (SR–ICEEU–2019–010) (''Notice'').

[4] Notice, 84 FR at 24574. Capitalized terms not otherwise defined herein have the meanings given to them in the ICE Clear Europe Rules or the Clearing Membership Policy.

[5] *See* ICE Clear Europe Disclosure Framework, *available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf* (''The role of the ERC is to advise the management team on all key aspects of risk management and produce proposals for review by the Board Risk Committee, the Product Risk Committees, the Client Risk Committee, the Audit Committee and the Board as appropriate.'').

[6] *See* ICE Clear Europe Disclosure Framework, *available at https://www.theice.com/publicdocs/clear_europe/ICE_Clear_Europe_Disclosure_Framework.pdf* (''The CDS PRC is comprised of appointees nominated by CDS Clearing Members, Independent Non-Executives and representatives of ICEU.'').

and regulations thereunder applicable to the organization presenting it.[7] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rules 17Ad–22(e)(2) and (e)(18) thereunder.[9]

*A. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, in general, to protect investors and the public interest.[10]

As discussed above, the proposed rule change would specify that applications for membership are formally considered, and approved and rejected by, the Executive Risk Committee, rather than the Product Risk Committees. The proposed change would also specify the procedure by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements. The Commission believes that ICE Clear Europe's end-of-day pricing and robust and effective default management protocols both are critical to its ability to contribute to the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. For example, ICE Clear Europe relies on accurate end-of-day prices to generate margin requirements, which it uses to manage the risks associated with clearing security-based swap portfolios. Similarly, ICE Clear Europe relies on its default management tools to help manage and reduce the risks associated with a defaulting Clearing Member's portfolio. Such risks, if not properly managed, could cause ICC to realize losses on such portfolios and could disrupt ICE Clear Europe's ability to promptly and accurately clear security based swaps transactions and safeguard securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible. For these reasons, the Commission believes that the proposed rule change, in establishing a procedure by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements, and providing the Executive Risk Committee authority to reject Applicants that do not meet such requirements, would promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds which are in the custody or control of the ICE Clear Europe or for which it is responsible. For the same reasons, the Commission also believes the proposed rule change would, in general, protect investors and the public interest.

Section 17A(b)(3)(F) of the Act further requires that the rules of ICE Clear Europe are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[11] The Commission believes that the proposed changes discussed above would establish procedures by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements on an objective basis, without discriminating in the admission of Applicants.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, in general, protect investors and the public interest, and not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, consistent with the Section 17A(b)(3)(F) of the Act.[12]

*B. Consistency With Rule 17Ad–22(e)(2)*

Rule 17Ad–22(e)(2) requires, among other things, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.[13]

The proposed rule change would specify that applications for membership are formally considered, and approved and rejected by, the Executive Risk Committee, rather than the Product Risk Committees and that the Product Risk Committees are notified of approved applications. The Commission believes that the proposed rule change would help to ensure that the governance regarding approval of Applicants is clear and transparent, and establishes a clear and direct line of responsibility, by clearly specifying that the Executive Risk Committee would approve or disapprove applications. Moreover, in establishing that the Executive Risk Committee, through a delegation of authority from the ICE Clear Europe Board of Directors, is responsible for approving or rejecting Applicants, rather than the Product Risk Committees, the Commission believes the proposed rule change would consolidate, within ICE Clear Europe management, decisions regarding admission of applicants for membership at ICE Clear Europe. The Commission believes this would therefore clearly specify the responsibility of ICE Clear Europe management in approving or rejecting Applicants. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2).[14]

*C. Consistency With Rule 17Ad–22(e)(18)*

Rule 17Ad–22(e)(18) requires, among other things, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities.[15]

As discussed above, the proposed rule change would specify the procedure by which ICE Clear Europe would test and screen Applicants for their ability to satisfy end-of-day pricing and default management requirements. The proposed rule change also would specifically require that Applicants prove the ability to fulfill the pricing capabilities requirements set out in ICE Clear Europe's CDS End-Of-Day Price Discovery Policy and perform acceptably in a Default Management Test. The Commission believes that, in doing so, the proposed rule change would establish objective and disclosed procedures for approving Applicants based on the risk of Applicants not being able to comply with ICE Clear Europe's end-of-day pricing and default management requirements. Moreover, the Commission believes that these procedures represent objective criteria which any Applicant could potentially satisfy, thereby permitting fair and open access to membership at ICE Clear

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(2) and (e)(18).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(2).

[14] 17 CFR 240.17Ad–22(e)(2).

[15] 17 CFR 240.17Ad–22(e)(18).

Europe. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(18).[16]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[17] and Rules 17Ad–22(e)(2) and (e)(18) thereunder.[18]

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act[19] that the proposed rule change (SR–ICEEU–2019–010) be, and hereby is, approved.[20]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15137 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 240.17Ad–22(e)(18).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(2) and (e)(18).

[19] 15 U.S.C. 78s(b)(2).

[20] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86361; File No. SR–CBOE–2019–031]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule With Respect to Expiring Fee Waivers and Incentive Programs

July 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule with respect to expiring fee waivers and incentive programs. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule relating to various fee waivers and incentive programs that are set to expire June 30, 2019. The Exchange proposes to implement these amendments to its Fees Schedule on July 1, 2019.

Sector Indexes Facilitation Fee

First, the Exchange proposes to extend the current waiver of fees for facilitation orders in Sector Index options.[5] Currently, Footnote 11 of the Fees Schedule provides that for facilitation orders for Sector Index options executed in open outcry, or electronically via AIM or as a Qualified Contingent Cross order (''QCC'') or CFLEX transaction, the Exchange will assess no Clearing Trading Permit Holder Proprietary transaction fees through June 30, 2019. By way of background ''facilitation orders'' are defined as any order in which a Clearing Trading Permit Holder (''F'' origin code) or Non-Trading Permit Holder Affiliate (''L'' origin code) is contra to any other origin code order, provided the same executing broker and clearing firm are on both sides of the transaction (for open outcry) or both sides of a paired order (for orders executed electronically).[6] In adopting a waiver for facilitation fees in Sector Index options, the Exchange recognized that Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity and, as such, the Exchange applied a waiver of Clearing Trading Permit Holder Proprietary transaction fees for facilitation orders through June 30, 2019.[7] The Exchange continues to recognize the important role Clearing Trading Permit Holders play with respect to facilitating their own customers' trading activity and as such proposes to extend the waiver through December 31, 2019.

[5] *See* Cboe Options Fees Schedule, Footnote 47.

Sector Indexes License Surcharge

The Exchange next proposes to extend the current waiver of the Index License Surcharge of $0.10 per contract. In order to promote and encourage trading of the recently adopted Sector Index options, the Exchange adopted a waiver of the Index License Surcharge for Sector Index option transactions.[8] The current waiver is set to expire on June 30, 2019. As the volume in these relatively new products is low, the Exchange does not have enough information to evaluate the impact of the waiver. However, the Exchange wishes to extend this waiver through December 31, 2019 in order to continue to encourage the trading of Sector Index options and grow the product. The proposed waiver would apply to all non-customer transactions.

VIX License Index Surcharge

The Exchange next proposes to extend the current waiver of the Index License Surcharge of $0.10 per contract for Clearing Trading Permit Holder Proprietary (''Firm'') (origin codes ''F'' or ''L'') VIX orders that have a premium of $0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange wishes to extend this waiver through December 31, 2019. The Exchange adopted the waiver to reduce transaction costs on expiring, low-priced VIX options, which the Exchange believed would encourage Firms to seek to close and/or roll over

[6] *See* Cboe Options Fees Schedule, Footnote 11.

[7] *See* Securities Exchange Act Release No. 85167 (February 20, 2019), 84 FR 6039 (February 25, 2019) (SR–CBOE–2019–011).

[8] *See* Securities Exchange Act Release No. 82854 (March 12, 2018), 83 FR 11803 (March 16, 2018) (SR–CBOE–2018–012).

such positions close to expiration at low premium levels, including facilitating customers to do so, in order to free up capital and encourage additional trading.[9] The Exchange had proposed to waive the surcharge through June 30, 2019, at which time the Exchange had stated that it would evaluate whether the waiver has in fact prompted Firms to close and roll over these positions close to expiration as intended. After a review of Firms' activity, the Exchange believes the waiver has indeed encouraged Firms to do so and as such, proposes to extend the waiver of the surcharge through December 31, 2019, at which time the Exchange will again reevaluate whether the waiver has continued to prompt Firms to close and roll over positions close to expiration at low premium levels. Accordingly, the Exchange proposes to delete the reference to the current waiver period of June 30, 2019 from the Fees Schedule and replace it with December 31, 2019.

GTH Fees

The Exchange proposes to also extend waivers for access fees for the Global Trading Hours (''GTH'') session. Currently, the Exchange charges $1,000 per month for each GTH Market-Maker Trading Permit and $500 per month for each GTH Electronic Access Trading Permit.[10] The Exchange also assesses fees for Bandwidth Packets that may be used during GTH. Particularly, the Exchange charges $500 per month per GTH Quoting and Order Entry Bandwidth Packet and $250 per month per Order Entry Bandwidth Packet.[11] The Exchange further assesses monthly fees for CMI Login IDs and FIX Login IDs used for GTH, which are currently $750 per Login ID. In order to promote and encourage trading during the GTH session, the Exchange currently waives GTH Trading Permit and Bandwidth Packet fees for one (1) of each initial Trading Permits and one (1) of each initial Bandwidth Packet, per affiliated Trading Permit Holder (''TPH'').[12] The Exchange notes that the waivers are set to expire June 30, 2019. The Exchange also waives fees through June 30, 2019 for a CMI and FIX login ID if the CMI and/or FIX login ID is related to a waived GTH Trading Permit and/or waived Bandwidth packet. In order to continue to promote trading during GTH, the Exchange wishes to extend these waivers through September 30, 2019.[13] Based on experience, the Exchange believes such waivers have encouraged participation during GTH. Continued participation during GTH results in potential increased order flow, which provides greater trading opportunities for all market participants. Additionally, the proposed waivers apply to all TPHs that wish to participate in the GTH session.

MXEA and MXEF LMM Incentive Program

The Exchange also proposes to extend the financial program for Lead Market-Makers (''LMMs'') appointed in MSCI EAFE Index (''MXEA'') options and MSCI Emerging Markets Index (''MXEF'') options.[14] Currently, if the appointed LMM in MXEA and MXEF provides continuous electronic quotes during Regular Trading Hours that meet or exceed the above heightened quoting standards in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a payment for that month in the amount of $20,000 per class, per month. The Fees Schedule currently provides that this program will be in place through June 30, 2019. In order to continue to encourage LMM(s) in MXEA and MXEF to continue serving as LMMs and provide significant liquidity in these options, which would provide greater trading opportunities for all market participants, the Exchange proposes to renew this program through December 31, 2019.

RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM Transaction Fees

In order to promote and encourage trading of seven FTSE Russell Index products (*i.e.,* Russell 1000 Growth Index (''RLG''), Russell 1000 Value Index (''RLV''), Russell 1000 Index (''RUI''), FTSE Developed Europe Index (''AWDE''), FTSE Emerging Markets Index (''FTEM''), China 50 Index ''(FXTM'') and FTSE 100 Index (''UKXM'')), the Exchange waives all transaction fees (including the Floor Brokerage Fee, Index License Surcharge and CFLEX Surcharge Fee) for each of these products for all market participants.[15] This waiver is set to expire June 30, 2019. As the volume in these products is low, the Exchange does not have enough information to evaluate the impact of the waiver. However, the Exchange wishes to extend this waiver through December 31, 2019 in order to continue to encourage growth and trading of these products.

UKXM

The Exchange previously offered a compensation plan to the Designated Primary Market-Maker(s) (''DPM(s)'') appointed in UKXM to offset its DPM costs.[16] Specifically, the DPM appointed for an entire month in UKXM will receive a payment of $5,000 per month through June 30, 2019. The Exchange proposes to extend this plan through December 31, 2019 to continue to incentivize the DPM(s) to continue to serve as a DPM in this product and provide the necessary liquidity, which provides greater trading opportunities for all market participants in this option class.

Elimination of Obsolete Reference

Lastly, the Exchange proposes to eliminate references to an obsolete fee and incentive program. Specifically, on February 11, 2019, the Exchange filed a rule filing, SR–CBOE–2019–012, which proposed, among other things, to eliminate the Supplemental VIX Total Firm Discount program (''Supplemental VIX Discount''), effective February 1, 2019.[17] The Exchange notes that although it reflected the elimination of the program in the filing's Exhibit 5, it mistakenly failed to eliminate references to the program in corresponding Footnote 11 of the Fees Schedule. Accordingly, the Exchange proposes to update Footnote 11 to eliminate references to the Supplemental VIX Discount. No substantive change is being made by this deletion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations

[9] *See* Securities Exchange Act Release No. 76923 (January 15, 2016), 81 FR 3841 (January 22, 2016) (SR–CBOE–2016–002).

[10] *See* Cboe Options Fees Schedule, Trading Permit and Tier Appointment Fees. Each Trading Permit provides bandwidth and three logins.

[11] *See* Cboe Options Fees Schedule, Bandwidth Packet Fees Bandwidth Packets provide TPHs with additional bandwidth and logins.

[12] *See* Securities Exchange Act Release No. 74422 (March 4, 2015), 80 FR 12680 (March 10, 2015) (SR–CBOE–2015–020).

[13] The Exchange notes that in October 2019, it is migrating the current Cboe Options trading platform onto new technology and in connection with such migration, is anticipating a new Trading Permit and connectivity structure. As such, the Exchange proposes to extend the GTH related waivers only through September 2019.

[14] *See* Securities Exchange Act Release No. 83585 (July 2, 2018), 83 FR 31825 (July 9, 2018) (SR–CBOE–2018–050).

[15] *See* Securities Exchange Act Release No. 76288 (October 28, 2015), 80 FR 67805 (November 3, 2015) (SR–CBOE–2015–096). *See also* Securities Exchange Act Release No. 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR–CBOE–2016–021) and Securities Exchange Act Release No. 78930 (September 26, 2016), 81 FR 67408 (September 30, 2016) (SR–CBOE–2016–070).

[16] *See* Securities Exchange Act Release No. 77547 (April 6, 2016), 81 FR 21611 (April 12, 2016) (SR–CBOE–2016–021).

[17] *See* Securities Exchange Act Release No. 85169 (February 21, 2019), 84 FR 6445 (February 27, 2019) (SR–CBOE–2019–012).

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[20] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed waiver extension of the Clearing Trading Permit Holder Proprietary transaction fee for facilitation orders in Sector Index options is reasonable because these orders will not be charged any fee. The Exchange believes that this is equitable and not unfairly discriminatory because a similar waiver also applies to other products, including other proprietary index products (*e.g.,* MXEA, MXEF, DJX and XSP).[21] Further, as noted above, Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity. Moreover, Clearing Trading Permit Holders have obligations, which normally do not apply to other market participants (*e.g.,* must have higher capital requirements, clear trades for other market participants, must be members of OCC). The Exchange also notes that the waiver of fees for Sector Index facilitation orders executed in open outcry or electronically in AIM, QCC or as a CFLEX transaction applies to all such orders.

The Exchange believes it's appropriate to continue to waive the Index License Surcharge for Sector Indexes because the Sector Indexes are still relatively new products and the Exchange wishes to encourage and promote trading of these products. The Exchange believes waiving this fee is a reasonable means to encourage trading of these products as it applies to all market participants and results in lower fees assessed for Sector Index transactions.

The Exchange believes it's appropriate to waive the Index License Surcharge for Clearing Trading Permit Holder Proprietary VIX orders that have a premium of $0.10 or lower and have series with an expiration of 7 calendar days or less because the Exchange wants to continue encouraging Firms to roll and close over positions close to expiration at low premium levels. Particularly, the Exchange believes it's reasonable to waive the entire $0.10 per contract surcharge because without the waiver of the surcharge, firms are less likely to engage in these transactions, as opposed to other VIX transactions, due to the associated transaction costs. The Exchange believes it's equitable and not unfairly discriminatory to limit the waiver to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of VIX customer orders with a premium of $0.10 or lower and series with an expiration of 7 calendar days or less. Additionally, as noted above, Clearing Trading Permit Holders have obligations, which normally do not apply to other market participants (*e.g.,* must have higher capital requirements, clear trades for other market participants, must be members of OCC).

The Exchange believes extending the waiver of the GTH fee for the first Quoting and Order Entry Bandwidth Packet and the first Order Entry Bandwidth Packet through September 2019 is reasonable, equitable and not unfairly discriminatory, because waiving those respective fees promotes and encourages trading during the GTH session. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to waive fees for Login IDs in order to promote and encourage ongoing participation in GTH and also applies to all GTH TPHs. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to waive GTH access fees through September, 2019 in order to further promote trading. To the extent that this purpose is achieved, all the Exchange's market participants who participate in the GTH session should benefit from increased liquidity.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to extend the MXEA and MXEF LMM Incentive Program because the Exchange wants to ensure it continues incentivizing the LMM(s) in these products to provide liquid and active markets in these products to encourage its growth. The Exchange notes that without the proposed financial incentive, there may not be sufficient incentive for TPHs to undertake an obligation to quote at heightened levels, which could result in lower levels of liquidity to the detriment of all market participants. The Exchange believes it is equitable and not unfairly discriminatory to only offer this financial incentive to MXEA and MXEF LMM(s) because it benefits all market participants trading in these options to encourage the LMM(s) to satisfy the heightened quoting standard, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that LMMs provides a crucial role in providing quotes and the opportunity for market participants to trade products, including MXEA and MXEF, which can lead to increased volume, thereby providing a robust market. Additionally, if a MSCI LMM does not satisfy the heightened quoting standard then it simply will not receive the offered per class payment for that month.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to extend the waiver of all transaction fees for RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee, because the respective fees are being waived in their entirety, which promotes and encourages trading of these products which are still relatively new. The waiver also would apply to all TPHs.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to renew the compensation plan to continue to incentivize the DPM to continue to serve as a DPM in this product. Particularly, the Exchange notes that there is low volume in UKXM and as such, the Exchange wishes to ensure the DPM continues to play a crucial role in providing liquid and active markets in the product to encourage growth and provide trading opportunities which would benefit all market participants.

Lastly, the Exchange believes eliminating references to the Supplemental VIX Discount program, which no longer exists, alleviates confusion and maintains clarity in the Fees Schedule, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(4).

[21] *See* Cboe Fees Schedule, ''Equity Options Rate Table, ''ETF and ETN Options Rate Table'' and ''Index Options Rate Table—All Index Products Excluding Underlying Symbol List A and Sector Indexes'', all of which provide a $0.00 facilitation fee for origin code ''F'' and ''L'' orders.

general, protects investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

First, the Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes extend existing fee waivers and incentive programs and apply to all similarly situated TPHs uniformly. To the extent certain market participants receive a benefit others do not these different market participants have different obligations and circumstances. For example, DPMs and LMMs play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Additionally, Clearing Trading Permit Holders can be an important source of liquidity when they facilitate their own customers' trading activity and also have other obligations, which normally do not apply to other market participants (*e.g.,* must have higher capital requirements, clear trades for other market participants, must be members of OCC). The Exchange also notes that the proposed waivers and incentive programs are designed to attract additional order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and tighter spreads and encourages all TPHs to send orders, thereby contributing to robust levels of liquidity.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the proposed changes only affect trading on Cboe Options. Next, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 options exchanges, as well as off-exchange venues. Based on publicly available information, no single options exchange has more than 23% of the market share of executed volume of options trades.[22] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[24] Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [27] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, Cboe Options requested that the Commission waive the 30-day operative delay. The Exchange indicated in its filing that its extension of the above-described fee waivers and incentive programs was designed to encourage increased market participation, including in GTH and in relatively new products. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will avoid the potential for disruption among TPHs associated with an interruption in the continuity of the proposed extensions set forth above. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[28]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[22] See Cboe Global Markets, U.S. Options Market Volume Summary (June 13,2019), available at *http://markets.cboe.com/us/options/market_share/*.

[23] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 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.

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2019–031 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–031, and should be submitted on or before August 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15139 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

[29] 17 CFR 200.30–3(a)(12) and (59).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86352; File No. SR–CboeEDGX–2019–044]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fee Schedule Applicable to Members and Non-Members of the Exchange Pursuant to EDGX Rules 15.1(a) and (c)

July 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule applicable to Members and non-Members[3] of the Exchange pursuant to EDGX Rules 15.1(a) and (c). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its options trading platform (''EDGX Options'') in connection with the fee assessed for Customer orders in Mini-SPX Index (''XSP'') options (yielding fee code XC), as well as add certain XSP-related fee codes to the Automated Improvement Mechanism (''AIM'') Pricing table, effective July 1, 2019.

The Exchange currently provides a standard rebate of $0.05 for Customer orders in XSP (an Exchange proprietary product). The Exchange no longer wishes to provide a rebate for Customer XSP transactions and now proposes to remove the current rebate and amend the fee schedule so that Customer orders in XSP will be free. The Exchange notes that it currently assesses no charge or a marginal charge on other Customer transactions. For example, the Exchange does not charge a transaction fee for Customer Agency orders in an AIM auction (including Customer-to-Customer orders and AIM Agency orders in XSP), for certain Customer complex orders (including complex orders leg into the Simple Book and Customer-to-Customer complex orders), and Qualified Contingent Cross (''QCC'') orders (both Agency and Contra QCC orders).

In addition to this, the Exchange also proposes to add the fee codes for AIM-related orders in XSP to Footnote 6 and add references to the fee codes in the AIM Pricing table under Footnote 6. This includes fee code XD, appended to Customer AIM orders in XSP, and fee code XB, appended to Customer-to-Customer Immediate Cross AIM orders in XSP. The AIM Pricing table summarizes AIM fees and rebates for orders that transact in an AIM Auction (specifically, orders that yield fee codes,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

BA,[4] BB,[5] BC,[6] BD,[7] BE,[8] and CC,[9] already provided for in the Fee Codes and Associated Fees section of the fee schedule, in a table form and includes a provision regarding AIM Break-Up Credits for such orders (as described below). By way of background, AIM includes functionality in which a Member (an ''Initiating Member'') may electronically submit for execution an order it represents as agent on behalf of a Priority Customer,[10] broker dealer, or any other person or entity (''Agency Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the Agency Order for electronic execution into the AIM Auction pursuant Rule 21.19. All options traded on EDGX Options are eligible for AIM. The Exchange notes that any person or entity other than the Initiating Member may submit responses to an Auction. An AIM Auction takes into account responses to the Auction as well as interest resting on the Exchange's order book at the conclusion of the auction (''unrelated orders''), regardless of whether such unrelated orders were already present on the Exchange's order book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they will be considered for participation in the AIM order allocation process. The Exchange also applies an AIM Break-Up Credit to the Member that submits an AIM Agency Order, including a Member who routes an order to the Exchange with a Designated Give Up, when the AIM Agency Order trades with an AIM Responder Order. Currently, the AIM Break-Up Credit provided with respect to an AIM Auction in a Penny Pilot Security is $0.25 per contract and the AIM Break-Up Credit provided with respect to an AIM Auction in a Non-Penny Pilot Security is $0.60 per contract.

In April 2019, the Exchange added to its fee schedule certain fee codes related to orders in XSP, including for Customer AIM orders in XSP (yielding fee code XD) and AIM Customer-to-Customer Immediate Cross orders in XSP (orders yielding fee code XB). At this time, however, the Exchange inadvertently neglected to add such AIM-related Customer XSP fee codes to the AIM Pricing table and adopt AIM Break-Up Credits for orders yielding XB and XD. The Exchange now proposes to add these fee codes to Footnote 6, including adding references in the AIM Pricing table in order to provide additional clarity to Members regarding AIM-related Customer orders in XSP, as well as apply the AIM Break-Up Credit to orders yielding fee codes XD and XB. As stated, the AIM Pricing table merely summarizes AIM fees and rebates for orders yielding certain fee codes, that are already provided for in the Fee Codes and Associated Fees section of the fee schedule, and the AIM Break-Up Credit already applies to the other AIM-related orders found within the Fee Codes and Associated Fees section.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[11] in general, and furthers the requirements of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that its proposed change to assess no charge for Customer transactions in XSP is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that it is reasonable and equitable to assess no charge for Customer transactions in XSP because Customers won't have to pay any fee for XSP transactions. Moreover, it is in line with multiple other types of Customer orders for which the Exchange does not assess a fee. As described above, the Exchange currently does not charge a transaction fee for various other Customer orders in an AIM auction, various Customer complex orders, nor for Customer QCC orders. The Exchange believes that, although it is eliminating the rebate for Customer XSP orders, the proposal to not assess any fees for such transactions will continue to incentivize Customer order flow in XSP, which enhances liquidity on the Exchange. This enhanced Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in Market Maker activity in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange also believes that the proposed Customer transaction fee is equitable and not unfairly discriminatory because the proposed fee assessment (of no charge) will apply equally to all Customer transactions in XSP, *i.e.,* all Customers will be assessed the same amount. Moreover, the Exchange notes that while Customer's will not be assessed any fees, as compared to other market participants,[13] the Exchange believes that the proposal to not assess any fee is equitable and not unfairly discriminatory because, as stated above, Customer order flow enhances liquidity on the Exchange, in turn providing more trading opportunities and attracting Marker-Makers to facilitate tighter spreads to the benefit of all market participants. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.[14]

That Exchange also believes that its proposed change to add fee codes XD and XB to the AIM Pricing table is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed change is reasonable because it serves to update the AIM Pricing chart as a result of an inadvertent oversight. As stated, in April 2019, the Exchange added to its fee schedule certain fee codes related to orders in XSP, including for Customer AIM orders in XSP (yielding fee code XD) and AIM Customer-to-Customer Immediate Cross orders in XSP (orders yielding fee code XB), yet inadvertently failed to add such AIM-related Customer XSP fee codes to Footnote 6

[4] Fee code BA is appended to Non-Customer AIM orders and is assessed a fee of $0.20 per share.

[5] Fee code BB is appended to AIM Contra orders and is assessed a fee of $0.05 per share.

[6] Fee code BC is appended to AIM Agency Customer orders and is provided a rebate of $0.14 per share.

[7] Fee code BD is appended to AIM Responder Penny Pilot orders and is assessed a fee of $0.50 per share.

[8] Fee code BE is appended to AIM Responder Non-Penny Pilot orders and is assessed a fee of $1.05 per share.

[9] Fee code CC is appended to AIM Customer-to-Customer Immediate Cross orders and is free.

[10] The term ''Priority Customer'' means any person or entity that is not: (A) A broker or dealer in securities; or (B) a Professional. The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Rule 16.1.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See* EDGX Options Fee Schedule, ''Fee Codes and Associated Fees'', which assesses a fee of $0.45 for all Firm orders in XSP, $0.20 for all Market Maker liquidity adding orders in XSP, and $0.48 for all Non-Market Maker/Non-Customer orders in XSP.

[14] *See* MIAX Options Fee Schedule, Transaction Fees, SPIKES, which gives preferential Customer [sic] treatment for transaction in MIAX Option's proprietary product, SPIKES. The Exchange notes XSP is an Exchange proprietary product.

at that time (which includes the applicability of the AIM Break-Up Credit under Footnote 6). In addition to this, the Exchange notes that the AIM Pricing table merely summarizes in table form AIM fees and rebates for orders yielding certain AIM-related fee codes, that are already provided for in the Fee Codes and Associated Fees section of the fee schedule (which currently includes fee codes XD and XB). Therefore, the Exchange believes that the proposed change to add these fee codes to the AIM Pricing table will provide additional clarity to Members by summarizing in table form the rates for their AIM-related orders in XSP, which already exist within the fee schedule. Moreover, the Exchange notes that the proposed AIM Break-Up Credits currently apply to the other AIM-related orders provided for in the Fee Codes and Associated Fees section.

The Exchange believes that the proposed change to add fee codes XD and XB to the AIM Pricing chart is equitable and not unfairly discriminatory because the rates for such orders yielding these fee codes are already in place, and the proposed change will not alter those rates or descriptions for such orders for any type of market participant. Instead, this change serves to provide additional clarity for all Members by adding these AIM-related fee codes to the summary table for AIM Pricing.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change will apply uniformly to all Customers transacting in XSP. As described above, while no fee will be assessed for Customers, different market participants have different circumstances, such as the fact that preferential pricing to Customers is a long-standing options industry practice which serves to enhance Customer order flow, thereby attracting Marker-Makers to facilitate tighter spreads and trading opportunities to the benefit of all market participants. In addition to this, the Exchange notes that it currently assesses no charge for various other types of Customer orders.

In addition to this, the Exchange does not believe that the proposed change to add fee codes appended to AIM-related orders in XSP, which currently exist in the fee schedule, to Footnote 6 will impose a burden on intramarket competition. The AIM Pricing table merely summarizes the fees and rebates for AIM-related orders that are currently found in the fee schedule and the proposed change serves to provide additional clarity regarding existing AIM-related orders in XSP by adding them to this table. Additionally, the AIM Break-Up Credits currently apply to the other AIM-related orders found within the fee schedule and the proposal to adopt AIM Break-Up Credits for orders yielding XD and XB will result in such orders being treated the same as all other AIM-related orders.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the rule change affects a proprietary product, which is traded exclusively on the Exchange and the Exchange's affiliate, Cboe Exchange, Inc.[15]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and paragraph (f) of Rule 19b–4[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[15] *See* Cboe Exchange, Inc. Fees Schedule.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

**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–CboeEDGX–2019–044 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–CboeEDGX–2019–044. 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–CboeEDGX–2019–044 and should be submitted on or before August 7, 2019.

[18] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15134 Filed 7–16–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16018 and #16019; TEXAS Disaster Number TX–00517]**

### Administrative Declaration of a Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 07/10/2019.

*Incident:* Severe Storms, Straight-line Winds and Flooding.

*Incident Period:* 05/07/2019 through 05/08/2019.

**DATES:** Issued on 07/10/2019.

*Physical Loan Application Deadline Date:* 09/09/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/10/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Fort Bend, Gregg.

*Contiguous Counties:*

Texas: Austin, Brazoria, Harris, Harrison, Rusk, Smith, Upshur, Waller, Wharton.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.875 |
| Homeowners without Credit Available Elsewhere | 1.938 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 16018 B and for economic injury is 16019 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

**Christopher Pilkerton,**

*Acting Administrator.*

[FR Doc. 2019–15123 Filed 7–16–19; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF STATE

**[Public Notice: 10821]**

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "In a Cloud, in a Wall, in a Chair: Six Modernists in Mexico at Midcentury" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that the objects to be exhibited in the exhibition ''In a Cloud, in a Wall, in a Chair: Six Modernists in Mexico at Midcentury,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, in Chicago, Illinois, from on or about September 6, 2019, until on or about January 12, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Marie Therese Porter Royce,**

*Assistant Secretary, Educational and Cultural Affairs, Department of State.*

[FR Doc. 2019–15163 Filed 7–16–19; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0180]**

### Hours of Service of Drivers: Application for Exemption; Small Business in Transportation Coalition

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Application for exemption; final determination.

**SUMMARY:** FMCSA announces its decision to deny the application of the Small Business in Transportation Coalition (SBTC) for an exemption from the electronic logging device (ELD) requirements for all motor carriers with fewer than 50 employees, including, but not limited to, one-person private and for-hire owner-operators of commercial motor vehicles (CMVs) used in interstate commerce. FMCSA has analyzed the exemption application and public comments, and has determined that it cannot ensure that granting for the requested exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Ms. LaTonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4024. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA

must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency and the reasons for denying an application must be published in the **Federal Register** (49 CFR 381.315(b)).

On December 16, 2015 (80 FR 78292), FMCSA published a final rule requiring most drivers then required to prepare hours-of-service (HOS) records of duty status (RODS) to use electronic logging devices (ELDs) instead of the previous paper logs to document their RODS. The compliance date for the ELD requirement was December 18, 2017.

## III. Request for Exemption

The Small Business in Transportation Coalition (SBTC) is a non-profit trade organization with more than 8,000 members. SBTC stated that it ''represents, promotes, and protects the interest of small businesses in the transportation industry. Through the exemption application, SBTC seeks relief from the ELD requirements for small private, common and contract motor carriers with fewer than 50 employees.'' SBTC contends that:

> ''[T]he ELD rule is not a 'safety regulation' per se as the FMCSA has concluded. Rather it is a mechanism intended to enforce a safety regulation by regulating the manner in which a driver records and communicates his compliance. That is, it is merely a tool to determine compliance with an existing rule that regulates over-the-road drivers' driving and on duty time, namely the actual safety regulation: the [HOS] regulations codified at 49 CFR 395.3 and 395.5. However, the ELD rule is not a safety regulation itself. Therefore, it is our position that this rule does *not* itself impact safety, and that the level of safety will not change based on whether or not our exemption application is approved. That would require a change to the [hours-of-service rules].''

SBTC asserts that the exemption would not have any adverse impacts on operational safety, as motor carriers and drivers would remain subject to the HOS regulations in 49 CFR 395.3, as well as the requirements to maintain a paper RODS under 49 CFR 395.8. The applicant argues that the requested exemption would allow motor carriers with fewer than 50 employees to maintain their current practices that have resulted in a proven safety record. A copy of SBTC's application for exemption is available for view in the docket for this rulemaking.

### Public Comments

On June 5, 2018, FMCSA published SBTC's application for exemption and requested public comment (83 FR 26140). The Agency received more than 1,900 comments. Although some comments focused more on the HOS rules than the exemption application and others were simply unclassifiable, the Agency estimates that over 95 percent of the comments favored the exemption, while more than 4 percent were opposed.

### FMCSA Decision

For the reasons given below, FMCSA denies the SBTC application for exemption. The SBTC application does not meet the regulatory standards for an exemption. SBTC failed to provide ''[t]he name of the individual or motor carrier that would be responsible for the use or operation of CMVs'' under the exemption [49 CFR 381.310(b)(2)]. SBTC did not provide the name of a single motor carrier. SBTC failed to ''[p]rovide[] an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption'' [§ 381.310(c)(3)]. Instead, SBTC said ''we defer to FMCSA to determine the total number of drivers and CMVs that would be operated under the exemption.'' SBTC failed to ''[e]xplain[] how you would ensure that you could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation'' [§ 381.310(c)(5)]. The application said ''we believe the level of safety is already assured by the pre-existing Hours of Service rule as opposed to this ELD enforcement mechanism rule.''

Nor did SBTC meet the statutory requirement in 49 U.S.C. 31315(b)(5)(D) to describe ''[t]he specific countermeasures the person would undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.'' SBTC proposed no countermeasures at all.

For all of these reasons, FMCSA denies SBTC's request for exemption.

Issued on: July 9, 2019.

**Raymond P. Martinez,**

*Administrator.*

[FR Doc. 2019–15206 Filed 7–16–19; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0346]**

## Commercial Driver's Licenses; Pilot Program To Allow Drivers Under 21 To Operate Commercial Motor Vehicles in Interstate Commerce; Extension of Comment Period

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments; extension of comment period.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) extends the comment period for its May 15, 2019 notice concerning a possible pilot program to allow non-military drivers aged 18, 19, and 20 to operate commercial motor vehicles (CMVs) in interstate commerce. FMCSA received a request for an extension to the comment period from the American Trucking Associations (ATA). The Agency believes it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the notice. Therefore, the Agency extends the deadline for the submission of comments from July 15, 2019, to August 14, 2019.

**DATES:** The comment period for the notice published May 15, 2019 at 84 FR 21895 is extended. Comments must be received on or before August 14, 2019.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0346 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/docket?D=FMCSA-2018-0346.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Selden Fritschner, Commercial Drivers License Division, Federal Motor Carrier

Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, *selden.fritschner@dot.gov,* 202–366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

*A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2018–0346), indicate the specific section of the notice to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2018-0346.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

*B. Viewing Documents and Comments*

To view comments, as well documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2018-0346* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

## II. Background

The May 2019 notice (84 FR 21895) requested public comment on six subject areas: Training and experience, operational requirements, participation requirements, technology requirements, insurance, and research and data.

The comment period for the notice was set to expire on July 15, 2019. FMCSA received a request to extend the comment period, as noted above. A copy of the request is included in the docket referenced at the beginning of this notice.

ATA requested a 30-day extension of the comment period, stating that the additional time was needed to enable them to gather safety performance data and other relevant information to more fully address the issues presented in a way that will best aid the Agency.

FMCSA believes that other potential commenters to this notice will benefit from an extension as well. Accordingly, FMCSA extends the comment period for all comments on the notice to August 14, 2019.

Issued on: July 12, 2019.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2019–15212 Filed 7–12–19; 4:15 pm]

**BILLING CODE 4910–EX–P**

---

# DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## Early Scoping Notice

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Early scoping for a MAX tunnel project in metropolitan Portland, Oregon.

**SUMMARY:** The Federal Transit Administration (FTA) and Metro (the designated Metropolitan Planning Organization, or MPO, for the Portland region) issue this early scoping notice for a MAX tunnel project (Project). Metro is exploring ways to improve transit time and reliability to and through the Portland Central City. The purpose of this early scoping notice is to advise other agencies and the public of the intent to further study the feasibility of a tunnel under downtown Portland. The Project would improve regional transit service by addressing current and projected travel time, reliability, and resiliency issues for trips to and across Portland's downtown core. Early scoping for the feasibility study is occurring within the context of the Council on Environmental Quality's regulations for complying with the National Environmental Policy Act (NEPA).

**DATES:**

*MAX Tunnel Study Open House:* 5 to 7 p.m., July 22, 2019, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232, Council Chamber.

*Additional Opportunity to Comment:* An online survey at *https://www.oregonmetro.gov/public-projects/max-tunnel-study* will be open until 12:00 a.m. on August 12, 2019. Paper copies of the survey are available at reception at Metro, 600 NE Grand Avenue, Portland, OR 97232, and at reception at TriMet Administrative Office, 1800 SW 1st Avenue #300, Portland, OR 97201.

**ADDRESSES:** Written comments on this notice should be submitted by Monday, August 12, 2019, to Investment Areas, Metro, 600 NE Grand Avenue, Portland, OR 97232. Telephone: (503) 813–7535; email: *maxtunnel@oregonmetro.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mark Assam, Environmental Protection Specialist, Federal Transit Administration, Region 10, 915 Second Avenue, Room 3142, Seattle, WA 98174. Telephone: (206) 220–4465. Eryn Kehe, Communications Supervisor, Metro, 600 NE Grand Avenue, Portland, OR 97232. Telephone: (503) 797–1881.

**SUPPLEMENTARY INFORMATION:** This notice invites the public to comment on a statement of the Purpose and Need for a tunnel, the Project study area, potential impacts, and potential alternatives. This notice also invites the public to review and comment on reports previously developed by local planning and transportation agencies, including Metro and the Tri-County Metropolitan Transportation District of Oregon (TriMet), that support the focus to further study a tunnel. Early scoping is intended to identify the most reasonable alternatives to undergo formal scoping and NEPA environmental review. Information about an upcoming public meeting, opportunities to comment, and the Project's Purpose and Need is set forth in the following sections.

**Early Scoping**

Early scoping is an optional step in the NEPA process that precedes formal scoping. Formal scoping begins when an agency issues a Notice of Intent to prepare an environmental impact statement (EIS). Formal scoping is typically the first opportunity for the public to learn about a proposed project that may receive FTA funding and comment on the scope of the anticipated planning effort. In this case, FTA and Metro are using early scoping to publicize and invite comment on the Project's Purpose and Need, potential alternatives, study area, potential impacts, and prior studies before formally beginning to prepare an EIS.

At the end of early scoping, FTA and Metro will determine what potential alternatives along with tunnel options are available in order to move forward into the formal NEPA process. All reasonable alternatives will be evaluated in terms of the social, economic, and environmental impacts. At this stage, the proposed alternatives would include a No Build Alternative and a tunnel.

**Project Background and Purpose and Need**

A Purpose and Need is required for projects entering NEPA environmental review. FTA and Metro invite comment on the Project's preliminary Purpose and Need to be used to guide the development and evaluation of potential alternatives.

*Background*

The Portland Central City is the economic and cultural center of the region, with the largest concentration of people and jobs in Oregon. It is also at the core of the regional transportation system, and its mobility problems and constraints affect local and regional mobility and the regional economy. Slow travel times through the Central City—coupled with frequent delays, reliability issues, and overcrowding—are major problems today. As the region grows, these issues will become even more critical.

Over the next 20 years, the region is expected to grow by 635,000 people and 378,000 jobs, with the Central City absorbing 35,000 people and 32,000 jobs. During this time span, these mobility problems will become even more acute, further affecting regional quality of life and long-term economic vitality.

The Metro 2040 Growth Concept, originally adopted in 1995, is a 50-year plan managing growth for the region. In addition to setting the framework for where growth will be concentrated in the region, it calls for a high-quality transit system as part of the regional multimodal transportation solution. MAX Light Rail is the backbone of the transit system, carrying more than 115,000 daily trips and playing a vital role in serving the growing demand for travel between the Central City and other regional jobs and housing centers defined in the 2040 Growth Concept. All of the region's light rail lines cross through the Central City and must travel through multiple signalized intersections on surface streets. As traffic congestion in this area grows, delays at these intersections are increasing, adversely affecting travel time, reliability, and system capacity.

All of the region's light rail lines also cross the Willamette River on the Steel Bridge, which is also a constraint on the overall system. The Steel Bridge was built in 1912 and is one of the oldest lift bridges in the United States. The bridge can accommodate only a single pair of tracks, and trains must travel at 10 miles per hour, limiting present and future throughput. The bridge is seismically vulnerable and likely would not survive a major earthquake. Its age and condition already require increasing maintenance, and bridge closures and lifts disrupt the entire system. Consideration of options to modify the bridge as alternatives to a tunnel are discussed further in the Preliminary Analysis section.

*Purpose*

The purpose of the proposed Project is to increase regional mobility and capacity by improving transit travel times and system reliability to and through the Portland Central City, as well as the following:

- Improve mobility between regional centers.
- Increase transit rail capacity and frequency without impacting other surface mobility options.
- Increase transit ridership and transit mode share.
- Create a reliable alternative to cross-town travel on congested roadways.
- Support the increasing transportation demand of key destinations, present and future development, and population and employment growth expected in the Central City and the region.

*Need*

The Project is needed to accomplish the following:

- Address increasingly unreliable and slow transit trips to and through the Central City.
- Address transit capacity and reliability issues constraining the regional transit system.
- Accommodate peak future light rail transit demands.
- Allow more frequent light rail service on all lines.
- Improve access from households to jobs, education, and social opportunities in and across the Central City and other regional centers.
- Ensure long-term regional mobility for low-income residents and reduce barriers between housing and transportation cost-burdened households and employment opportunities.
- Create the transit infrastructure needed to support future expansions of regional transit service.
- Increase the transit system's resiliency to seismic and environmental changes.
- Provide a more competitive alternative to crosstown auto trips on congested freeways.

**Preliminary Analysis**

In 2017, TriMet, the Portland region's transit operator, produced the Steel Bridge Transit Improvements Report (SBTI) to assess options to address one of the pinch points in downtown Portland. The report, which evaluated tunnel and bridge options, is available on the Project website (*www.oregonmetro.gov/public-projects/max-tunnel-study*). FTA and Metro are seeking input on whether continued focus on a tunnel is appropriate.

In 2019, Metro convened staff from local jurisdictions to contemplate long-term solutions to improve mobility to and through the Portland Central City. The group developed the preliminary Purpose and Need, which is presented in the previous sections, and based on the SBTI and additional considerations, identified a downtown tunnel as the only reasonable alternative to meet the Purpose and Need. The study supporting this recommendation is documented in the Central City Transit Capacity Screening Report (*https://www.oregonmetro.gov/sites/default/files/2019/06/27/Metro_CCTCA_Screening%20Report_2019-06-25.pdf*). FTA and Metro invite comments on the report and its conclusions. Additionally, FTA and Metro invite comments on all planning activities and developments, which include, but are not limited to, the Purpose and Need of the Project, the Project study area, potential impacts, and potential alternatives.

**Authority:** 40 CFR 1501.7.

Issued on: July 10, 2019.

**Linda M. Gehrke,**

*Regional Administrator.*

[FR Doc. 2019–15156 Filed 7–16–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Action

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

#### Notice of OFAC Action

On July 11, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

*Entity*

1. GENERAL DIRECTORATE OF MILITARY COUNTERINTELLIGENCE (a.k.a. DGCIM; a.k.a. DIRECCION GENERAL DE CONTRAINTELIGENCIA MILITAR (Latin: DIRECCIÓN GENERAL DE CONTRAINTELIGENCIA MILITAR)), Caracas, Capital District, Venezuela [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) of Executive Order 13850 (E.O. 13850) of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' as amended by Executive Order 13857, ''Taking Additional Steps to Address the National Emergency with Respect to Venezuela,'' of January 25, 2019, for operating in the defense and security sector of the Venezuelan economy.

Dated: July 11, 2019.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2019–15207 Filed 7–16–19; 8:45 am]

**BILLING CODE 4810–AL–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on July 31, 2019 on ''Exploring the Growing U.S. Reliance on China's Biotech and Pharmaceutical Products.''

**DATES:** The hearing is scheduled for Wednesday, July 31, 2019 at 9:00 a.m.

**ADDRESSES:** 428A Russell Senate Office Building, Washington, DC. A detailed agenda for the hearing will be posted on the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

**FOR FURTHER INFORMATION CONTACT:** Any member of the public seeking further information concerning the hearing should contact Leslie Tisdale Reagan, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *lreagan@uscc.gov. Reservations are not required to attend the hearing.*

**SUPPLEMENTARY INFORMATION:**

*Background:* This is the seventh public hearing the Commission will hold during its 2019 report cycle. The hearing will assess China's role in global health industries and implications for U.S. health, biotech, pharmaceutical firms, and the U.S. public. The hearing will also examine the activities of Chinese health and biotech firms in the United States and the ability of U.S. health and biotech firms to access the China market. The hearing will be co-chaired by Senator James Talent and Commissioner Michael Wessel. Any interested party may file a written statement by July 31, 2019 by mailing to the contact above. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

*Authority:* Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: July 12, 2019.

**Daniel W. Peck,**

*Executive Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. 2019–15245 Filed 7–16–19; 8:45 am]

**BILLING CODE 1137–00–P**

# Reader Aids

**Federal Register**

Vol. 84, No. 137

Wednesday, July 17, 2019

## 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** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.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.

## FEDERAL REGISTER PAGES AND DATE, JULY

31171–31458 ..... 1
31459–31686 ..... 2
31687–32012 ..... 3
32013–32254 ..... 5
32255–32606 ..... 8
32607–32838 ..... 9
32839–32974 .....10
32975–33162 .....11
33163–33690 .....12
33691–33820 .....15
33821–34050 .....16
34051–34254 .....17

## CFR PARTS AFFECTED DURING JULY

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.

**3 CFR**

**Proclamations:**
9907 .....32013
**Executive Orders:**
13879 .....33817
13880 .....33821
**Administrative Orders:**
Memorandums:
Memorandum of June 26, 2019 .....31457

**5 CFR**

**Proposed Rules:**
2427 .....33175

**7 CFR**

51 .....33827
701 .....32839
932 .....33827
1222 .....31459
1710 .....32607, 33163
1714 .....32607, 33163
1717 .....32607, 33163
1724 .....32607, 33163
1726 .....32607, 33163
1730 .....32607, 33163
3201 .....32015
**Proposed Rules:**
97 .....33176
210 .....31227
220 .....31227
226 .....31227
981 .....33182, 33861

**8 CFR**

208 .....33829
1003 .....31463, 33829
1208 .....33829
1292 .....31463

**10 CFR**

**Proposed Rules:**
40 .....32327
50 .....33710, 33861
52 .....33710, 33861
70 .....32327
72 .....32327
73 .....33861
74 .....32327
150 .....31518, 32327, 32657, 33864
430 .....33011, 33869
431 .....31232, 32328, 33011

**12 CFR**

229 .....31687
265 .....31701
365 .....31171
390 .....31171
1030 .....31687
**Proposed Rules:**
1003 .....31746

**14 CFR**

25 .....31174, 31176, 31178, 32975
39 .....31707, 31710, 32028, 32255, 32257, 32260, 32263, 32266, 32980
71 .....34051, 34052, 34054, 34055
73 .....33845
91 .....31713
95 .....34057
97 .....32030, 32033, 32037, 32038
**Proposed Rules:**
25 .....31522, 31747
27 .....31747
29 .....31747
39 .....31244, 31246, 31249, 31252, 31254, 31524, 31526, 31769, 31772, 31775, 32099, 32101, 32338, 32341, 32343, 32661, 32664, 32667, 33185, 33189, 33710
71 .....33022, 33191, 33193, 33194, 33196, 34072, 34073, 34075, 34077, 34078, 34080
73 .....34082
91 .....31747
121 .....31747
125 .....31747
135 .....31747

**15 CFR**

335 .....33848
922 .....32586
**Proposed Rules:**
922 .....33712

**16 CFR**

609 .....31180
**Proposed Rules:**
1112 .....32346
1239 .....32346

**17 CFR**

200 .....33492
210 .....32040
232 .....31192
240 .....33118, 33492
249 .....33492
275 .....33492
276 .....33669, 33681
279 .....33492
**Proposed Rules:**
1 .....32104
30 .....32105
39 .....32104
140 .....32104
Ch. II .....33024

**21 CFR**

10 .....31471

216 ....32268
500 ....32982
520 ....32982
522 ....32982
524 ....32982
526 ....32982
529 ....32982
556 ....32982
558 ....32982
800 ....31471
**Proposed Rules:**
101 ....32848
102 ....32848

**25 CFR**

**Proposed Rules:**
224 ....31529

**26 CFR**

1 ....31194, 31717, 33002, 33691
31 ....31717
301 ....31478, 31717
602 ....33691
**Proposed Rules:**
1 ....31777, 33120
53 ....31795

**27 CFR**

**Proposed Rules:**
4 ....31257
5 ....31264
7 ....31264
26 ....31264
27 ....31264

**29 CFR**

4022 ....33692
4902 ....32618

**30 CFR**

**Proposed Rules:**
70 ....31809
71 ....31809
72 ....31809
75 ....31809
90 ....31809
916 ....32109
918 ....32111

**31 CFR**

510 ....33002

**32 CFR**

315 ....34060
1701 ....31194

**33 CFR**

100 ....32061, 34061
110 ....32269
117 ....32619
165 ....31197, 31199, 31200, 31202, 31480, 31481, 31484, 31486, 31587, 31490, 31492, 31721, 31722, 31723, 31724, 31725, 32063, 32064, 32272, 33163, 33167, 33169, 33693
207 ....31493
334 ....33849
**Proposed Rules:**
100 ....31810, 32849
165 ....31273, 32112, 33713, 33880

**34 CFR**

Ch. II ....31726
200 ....31660
299 ....31660
600 ....31392
668 ....31392

**36 CFR**

7 ....32622

**37 CFR**

2 ....31498
7 ....31498
11 ....31498
210 ....32274
303 ....32296
350 ....32296
355 ....32296
370 ....32296
380 ....32296
382 ....32296
383 ....32296
384 ....32296
385 ....32296

**38 CFR**

17 ....33694
**Proposed Rules:**
17 ....32670

**39 CFR**

3020 ....32317
3060 ....31738
**Proposed Rules:**
3050 ....31277, 33882, 34082

**40 CFR**

52 ....31204, 31206, 31682, 31684, 31739, 31741, 32066, 32068, 32072, 32076, 32317, 32624, 33002, 33004, 33006, 33172, 33697, 33699, 33850, 34063
55 ....33853, 34065
59 ....34067
60 ....32084, 32520, 34067
61 ....34067
62 ....34067
63 ....34067
65 ....34067
81 ....32317, 32841, 33008, 33699, 33855
82 ....34067
180 ....31208, 31214, 32088, 32320, 32626, 33703
222 ....31512
223 ....31512
224 ....31512
228 ....31512
229 ....31512
271 ....32628
435 ....32094
745 ....32632
763 ....34067
**Proposed Rules:**
49 ....31813, 33715
52 ....31538, 31540, 31541, 31814, 32356, 32359, 32361, 32671, 32672, 32678, 32682, 32851, 33027, 33030, 33032, 33035, 33198, 33883, 33886, 34083, 34090, 34102
60 ....32114
62 ....31278, 31279, 32363, 32365
80 ....34106
81 ....31814, 33886
141 ....33045
142 ....33045
271 ....32852
272 ....32852
300 ....31281, 31826, 33046, 33721
721 ....32366

**42 CFR**

**Proposed Rules:**
447 ....33722

**43 CFR**

3830 ....31219
8365 ....32845

**44 CFR**

**Proposed Rules:**
62 ....32371

**45 CFR**

**Proposed Rules:**
1323 ....32116

**47 CFR**

**Proposed Rules:**
2 ....31542
54 ....32117, 34107
87 ....31542

**48 CFR**

215 ....33858
252 ....33858
501 ....33858
5108 ....33706
5119 ....33707
5145 ....33708
5152 ....33708
**Proposed Rules:**
1 ....33201
2 ....33201
4 ....33201
52 ....33201
53 ....33201

**49 CFR**

385 ....32323
**Proposed Rules:**
383 ....32689
385 ....32379

**50 CFR**

622 ....32648
635 ....33008
648 ....31743, 32649
660 ....31222, 32096
679 ....31517, 34070
**Proposed Rules:**
Ch. I ....31559
20 ....32385
216 ....32697, 32853
635 ....33205

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List July 9, 2019**

## 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.