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FEDERAL REGISTER

Vol. 84 Friday,

No. 202 October 18, 2019

Pages 55859–56094

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0500; Product Identifier 2019–NM–078–AD; Amendment 39–19759; AD 2019–20–06]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A310 series airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0500.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0500; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0091, dated April 26, 2019 (''EASA AD 2019–0091'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A310 series airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A310 series airplanes. The NPRM published in the **Federal Register** on July 1, 2019 (84 FR 31249). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comment

The FAA gave the public the opportunity to participate in developing this final rule. The FAA considered the comment received. FedEx had no objection to the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A310 Airworthiness Limitations Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated December 14, 2018 (''Airbus A310 ALS, Part 2, DT–ALI, Revision 03''), as supplemented by Airbus A310 ALS, Part 2, DT–ALI, Variation 3.1, Issue 01, dated December 20, 2018 (''Airbus A310 ALS, Part 2, DT–ALI, Variation 3.1, Issue 01''). Airbus A310 ALS, Part 2, DT–ALI, Revision 03, describes mandatory maintenance tasks that operators must perform at specified intervals. Airbus A310 ALS, Part 2, DT–ALI, Variation 3.1, Issue 01, describes additional mandatory maintenance tasks related to widespread fatigue damage that operators must perform at specified intervals.

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

Costs of Compliance

The FAA estimates that this AD affects 4 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 workhours per operator, although the FAA recognizes that this number may vary from operator to operator. In the

past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–20–06 Airbus SAS: Amendment 39–19759; Docket No. FAA–2019–0500; Product Identifier 2019–NM–078–AD.

(a) Effective Date

This AD is effective November 22, 2019.

(b) Affected ADs

This AD affects AD 2017–21–08, Amendment 39–19079 (82 FR 48904, October 23, 2017) (''AD 2017–21–08''); and AD 2018–19–31, Amendment 39–19432 (83 FR 48930, September 28, 2018) (''AD 2018–19–31'').

(c) Applicability

This AD applies to Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated December 14, 2018 (''Airbus A310 ALS, Part 2, DT–ALI, Revision 03''), as supplemented by Airbus A310 ALS, Part 2, DT–ALI, Variation 3.1, Issue 01, dated December 20, 2018 (''Airbus A310 ALS, Part 2, DT–ALI, Variation 3.1, Issue 01''). The initial compliance time for doing the tasks is at the time specified in Airbus A310 ALS, Part 2, DT–ALI, Revision 03, as supplemented by Airbus A310 ALS, Part 2, DT–ALI, Variation 3.1, Issue 01; or within 90 days after the effective date of this AD; whichever occurs later.

(h) No Alternative Actions or Intervals

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

(i) Terminating Action for AD 2017–21–08 and AD 2018–19–31

Accomplishing the actions required by this AD terminates all requirements of AD 2017–21–08 and AD 2018–19–31.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can

be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0091, dated April 26, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0500.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus A310 Airworthiness Limitations Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated December 14, 2018.

(ii) Airbus A310 Airworthiness Limitations Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 3.1, Issue 01, dated December 20, 2018.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on October 3, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22603 Filed 10–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

Bureau of Ocean Energy Management

30 CFR Part 585

[201E1700D2 ET1SF0000.EAQ000 EEEE500000]

Department of the Interior Policy Statement on Regulating Workplace Safety and Health Conditions on Renewable Energy Facilities on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior; Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notification of policy statement.

SUMMARY: This policy statement clarifies the role of the Department of the Interior (DOI) in regulating workplace safety and health conditions on renewable energy facilities on the Outer Continental Shelf (OCS). This policy does not apply to workplace safety and health requirements for OCS marine hydrokinetic (*i.e.,* wave, tidal, and ocean current) energy projects, for which operational requirements are within the jurisdiction of the Federal Energy Regulatory Commission, or OCS renewable energy facility support vessels, which are under the authority of the United States Coast Guard (USCG).

DATES: This policy statement is effective on October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Cheri Hunter, Bureau of Safety and Environmental Enforcement Renewable Energy Program Coordinator, (703) 787–1681, or by email: *cheri.hunter@bsee.gov*.

SUPPLEMENTARY INFORMATION:

Authority

The Energy Policy Act of 2005, Public Law 109–58, amended the Outer Continental Shelf Lands Act (OCSLA) to grant the Secretary of the Interior (Secretary) the authority to oversee renewable energy activities on the OCS (43 U.S.C. 1337(p)). Under section 8(p) of OCSLA, the Secretary has the authority to issue leases, rights-of-way (ROW), and rights-of-use and easements (RUE) on the OCS for activities that produce, or that support the production, transportation, or transmission of, energy from sources other than oil and gas, not otherwise authorized by other laws. Section 8(p) also gives the Secretary the specific authority to issue regulations to implement its provisions.[1]

Pursuant to 43 U.S.C. 1337(p)(4)(A), the Secretary has the statutory authority to ensure that activities conducted on renewable energy leases are carried out in a manner that provides for safety. The DOI has exercised this authority by promulgating regulations that govern renewable energy activities, set forth in 30 CFR part 585, including provisions to ensure that renewable energy activities on the OCS and activities involving the alternate use of OCS facilities for energy or marine-related purposes are conducted in a safe and environmentally sound manner, in conformance with the requirements of subsection 8(p) of the OCS Lands Act, other applicable laws and regulations, and the terms of the lease, ROW grant, RUE grant, or Alternate Use RUE grant.[2] These include requirements for Safety Management Systems and self-inspections, as well as provisions for agency-conducted inspections, incident reporting, investigations, and enforcement. See Memorandum of Understanding between the U.S. Department of the Interior and Federal Energy Regulatory Commission, Apr. 9, 2009.

DOI Regulatory Requirements Regarding Workplace Safety and Health

Under 30 CFR part 585, subpart H, regulated entities[3] must implement a Safety Management System (SMS) for activities conducted on OCS renewable energy leases.[4] An SMS provides a structured approach for the identification of hazards and risks, management of risks through identified methods, implementation of policies and procedures to ensure safety, and periodic assessment of conformance to expectations. An SMS addresses the management of both occupational and process safety risks associated with construction, operation, maintenance, and decommissioning of renewable energy facilities.

In addition to SMS requirements, DOI has promulgated regulations requiring self- and agency-conducted inspections

[1] 43 U.S.C. 1337(p)(8).

[2] 30 CFR 585.101(c).

[3] The requirements are applicable to ''You,'' which is defined to include ''an applicant, lessee, the operator, or designated operator, ROW grant holder, RUE grant holder, or Alternate Use RUE grant holder under this part, or the designated agent of any of these, or the possessive of each, depending on the context,'' as well as ''contractors and subcontractors of the entities'' listed previously. 30 CFR 585.112.

[4] 30 CFR 585.810.

and incident and equipment failure reporting, and providing a range of enforcement tools.[5]

If a regulated entity fails to design projects or conduct activities in a manner that ensures safety, or otherwise fails to comply with all applicable laws and regulations, DOI's available enforcement actions include issuing noncompliance notices, ordering cessation of activities, cancelling a lease or grant, and assessing civil penalties.[6]

Role of DOI

DOI will act as the principal Federal agency for the regulation and enforcement of safety and health requirements for OCS renewable energy facilities.[7] DOI considers its regulatory program, described in part above, to occupy the field of workplace safety and health for personnel and others on OCS renewable energy facilities, and to preempt the applicability of Occupational Safety and Health Administration (OSHA) regulations. *See* 29 U.S.C. 653(b)(1).

In carrying out its responsibilities on the OCS, DOI will collaborate and consult with OSHA on the applicability and appropriateness of workplace safety and health standards for the offshore wind industry and other offshore renewable energy industries.

In addition, DOI will continue to collaborate with the USCG to share relevant safety and training information and promote safety on the OCS.

In implementing this policy statement, DOI may amend its regulations or issue guidance related to the workplace health or safety of employees on renewable energy facilities on the OCS.

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2019–22826 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–VH–P

[5] 30 CFR 585.400–585.402, 585.813–585.833.

[6] 30 CFR 585.400–585.402.

[7] DOI notes that the USCG regulations do not extend to workplace safety on OCS renewable energy facilities.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0833]

RIN 1625–AA00

Safety Zone; Allegheny River Mile 14.7 to Mile 15, Cheswick, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Allegheny River from mile 14.7 to mile 15. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective from 7:30 p.m. through 9:30 p.m. on October 19, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0833 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 MST2 Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Charles.F.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. After receiving and fully reviewing the event information, circumstances and exact location, the Coast Guard determined that a safety zone was necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge based firework display. It would be impracticable to complete the full NPRM process for this safety zone because we need to establish it by October 19, 2019 and lack 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 the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards created by the barge based fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Marine Safety Unit Pittsburgh (COTP) has determined that a safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge based firework display.

IV. Discussion of the Rule

This rule establishes a safety zone on October 19, 2019, from 7:30 p.m. through 9:30 p.m. The safety zone will cover all navigable waters on the Allegheny River from mile 14.7 to mile 15. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created by a barge based firework display.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through Marine Safety Unit Pittsburgh at 412–221–0807. Persons and vessels permitted to enter the safety

zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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 safety zone. This safety zone impacts a one-half mile stretch of the Allegheny River for a limited duration of two hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and 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 a safety zone lasting two hours that will prohibit entry on the Allegheny River from mile 14.7 to mile 15, during the barge based firework event. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0833 to read as follows:

§ 165.T08–0833 Safety Zone; Allegheny River, Mile 14.7 to Mile 15, Cheswick, PA.

(a) *Location.* The following area is a safety zone: all waters of the Allegheny River from mile 14.7 to mile 15.

(b) *Effective period.* This section is effective from 7:30 p.m. through 9:30 p.m. on October 19, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officer.

(d) *Information broadcasts.* The Captain COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

A.W. Demo,

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

[FR Doc. 2019–22751 Filed 10–17–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0438; FRL–10000–92–Region 6]

Air Plan Approval; Arkansas; Interstate Transport Requirements for the 2010 1-Hour SO_2 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the portion of Arkansas's State Implementation Plan (SIP) submittal addressing two of the CAA interstate transport requirements for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). EPA is determining the Arkansas SIP contains adequate provisions to ensure that the air emissions in the state will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO_2 NAAQS in any other state.

DATES: This rule is effective on November 18, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2019–0438. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Nevine Salem, EPA Region 6 Office, Ozone and Infrastructure Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214–665–7222, *salem.nevine@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Salem or Mr. Bill Deese at 214–665–7253.

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

I. Background

On March 24, 2017, Arkansas submitted, through the Arkansas Department of Environmental Quality (ADEQ), a revision to its SIP to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 1-hour SO_2 NAAQS, including the interstate transport requirements of section 110(a)(2)(D)(i)(I). On February 14, 2018 (83 FR 6470), EPA approved Arkansas's infrastructure SIP submittal for the 2010 1-hour SO_2 NAAQS for all applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I) and the portion of 110(a)(2)(D)(i)(II) that pertains to visibility protection. On August 8, 2019, the EPA published a notice of proposed rulemaking (NPRM) to approve the portions of the March 24, 2017 submittal from the state of Arkansas as meeting the interstate transport requirement of the CAA requirements that the Arkansas SIP includes adequate provisions prohibiting any emissions activity in the state that will contribute significantly to nonattainment, or interferes with maintenance, of the 2010 1-hour SO_2 NAAQS in any downwind state. A detailed analysis of the State's submittals analysis and rationale for approval of the submittal were provided in the NPRM and will not be restated here. The public comment period for this proposed rulemaking ended on September 9, 2019. The EPA received one anonymous comment in favor/support of our proposed action. A copy of the comment is included in the docket of this rulemaking. We did not receive any adverse comments regarding our proposal. No response to comment is required.

II. Final Action

The EPA is approving the portions of the Arkansas's March 24, 2017 SIP that address two of the interstate transport requirements for the 2010 1-hour SO_2 NAAQS as these portions meet the requirements in CAA section 110 and specifically in 110(a)(2)(D)(i)(I). EPA determines that the Arkansas SIP contains adequate provisions to ensure that the air emissions in the State will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO_2 NAAQS in any other state. This action is being taken under section 110 of the Act.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

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

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 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, Incorporation by reference, Interstate transport of pollution, Sulfur oxides.

Dated: October 9, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

Title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart E—Arkansas

■ 2. In § 52.170(e), the table titled ''EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP'' is amended by revising the entry for ''Infrastructure for the 2010 SO_2 NAAQS'' to read as follows:

§ 52.170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure for the 2010 SO_2 NAAQS.	Statewide	3/24/2017	2/14/2018, 83 FR 6470.	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). Approval for 110(a)(2)(D)(i)(I) on 10/18/2019.
*	*	*	*	*

[FR Doc. 2019–22545 Filed 10–17–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 84, No. 202
Friday, October 18, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–19–0023; NOP–19–01]

RIN 0581 AD83

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances per October 2018 NOSB Recommendations (Crops and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture's (USDA's) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule proposes to add blood meal, made with sodium citrate, to the National List as a soil fertilizer in organic crop production; add natamycin to the National List to prohibit its use in organic crop production; and add tamarind seed gum as a non-organic agricultural substance for use in organic handling when organic forms of tamarind seed gum are not commercially available.

DATES: Comments must be received by December 17, 2019.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Robert Pooler, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S., Ag Stop 0268, Washington, DC 20250–0268. Telephone: (202) 720–3252.

Instructions: All submissions received must include the docket number AMS–NOP–19–0023, NOP–19–01, and/or Regulatory Information Number (RIN) 0581–AD83 for this rulemaking. When submitting a comment, clearly indicate the proposed rule topic and section number to which the comment refers. In addition, comments should clearly indicate whether the commenter supports the action being proposed and also clearly indicate the reason(s) for the position. Comments can also include information on alternative management practices, where applicable, that support alternatives to the proposed amendments. Comments should also offer any recommended language change(s) that would be appropriate to the position. Please include relevant information and data to support the position such as scientific, environmental, manufacturing, industry, or impact information, or similar sources. Only relevant material supporting the position should be submitted. All comments received will be posted without change to *http://www.regulations.gov.*

Document: To access the document and read background documents, or comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2642-South Building, 1400 Independence Ave. SW, Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m. Eastern Time, Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substance allowances and the nonsynthetic substance prohibitions in organic farming. The National List also identifies synthetic and nonsynthetic nonagricultural substances and nonorganic agricultural substances that may be used in organic handling.

The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501–6522) (OFPA), and § 205.105 of the USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations presented by the NOSB. Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, USDA's Agricultural Marketing Service (AMS) has published multiple rules amending the National List.

This proposed rule addresses three NOSB recommendations to amend the National List that were submitted to the Secretary on October 26, 2018. Table 1 summarizes the proposed changes to the National List based on these NOSB recommendations.

TABLE 1—SUBSTANCES BEING ADDED TO THE NATIONAL LIST OR CURRENT LISTINGS BEING AMENDED

Substance	National list section	Proposed rule action
Blood meal—made with Sodium citrate	§ 205.601	Add to National List.
Natamycin	§ 205.602	Add to National List.
Tamarind seed gum	§ 205.606	Add to National List.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

Blood Meal—Made With Sodium Citrate

The proposed rule would amend the National List to add blood meal—made with sodium citrate to § 205.601 as a synthetic substance allowed for use in crop production. Table 2 illustrates the proposed listing.

TABLE 2—PROPOSED RULE ACTION FOR BLOOD MEAL USING SODIUM CITRATE

Current rule:	N/A
Proposed rule action:	Add blood meal—made with sodium citrate to § 205.601(j).

On July 20, 2016, AMS received a petition [1] to add sodium citrate to the National List as an anticoagulant for spray dried blood products. The addition of sodium citrate prevents the blood from clotting and maintains the blood in a liquid state while it is processed to dried blood meal. In its natural state, blood meal is a nonsynthetic substance that may be used in organic production as a soil amendment.

The NOSB reviewed and considered this petition at its public meeting on October 26, 2018. At the conclusion of meeting, the NOSB recommended to the Secretary to add sodium citrate, for use as an anticoagulant in the production of blood meal, to the National List.[2] In its recommendation, the NOSB requested that AMS review sodium citrate to determine whether sodium citrate used to process blood meal must be on the National List in order for the resulting blood meal to be allowed in organic crop production.

AMS reviewed the NOSB's sodium citrate recommendation, the sodium citrate petition, and the sodium citrate technical report.[3] AMS concurs with the NOSB's determination that sodium citrate is a synthetic substance. Further, AMS concludes that the use of sodium citrate to manufacture blood meal means that blood meal would not qualify as a nonsynthetic substance. AMS also concurs with the NOSB's determination that the construct of the National List does not include processing aids for crop production substances; rather it includes the generic crop production substance. AMS determined that sodium citrate's use as an anticoagulant in the production of blood meal is not included within the production aid categories specified in the OFPA (7 U.S.C. 6517(c)(1)(B)).

Therefore, to address the NOSB's recommendation to allow the use of sodium citrate, AMS is proposing to add blood meal produced with sodium citrate to the National List. This determination is consistent with the current listing for liquid fish products that are pH adjusted with sulfuric, citric, or phosphoric acid and allowed in organic crop production as a plant or soil amendment (§ 205.601(j)(8)). In that case, the addition of a synthetic processing aid, *i.e.,* the specified acids, to a nonsynthetic substance, liquid fish products, was resolved by listing as a synthetic substance liquid fish products that are pH adjusted with the specified acids. The addition of the synthetic substance, sodium citrate, in the processing of blood meal means that the final product is also synthetic and must be on the National List for use in organic crop production.[4]

In its recommendation to the Secretary, the NOSB stated that there is no concern with using sodium citrate to make dried blood meal and noted that sodium citrate is on the National List in § 205.605(b) as an allowed ingredient for use in organic processing. This proposed rule would amend the National List by adding blood meal made with sodium citrate to § 205.601(j) as a plant or soil amendment.

§ 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

This proposed rule would add natamycin to § 205.602, Nonsynthetic substances prohibited for use in organic crop production.

Natamycin

The proposed rule would amend the National List to add natamycin to § 205.602. Table 2 illustrates the proposed listing.

TABLE 3—PROPOSED RULE ACTION FOR NATAMYCIN

Current rule:	N/A
Proposed rule action:	Add natamycin to § 205.602.

On September 1, 2016, AMS received a petition [5] to add natamycin as a nonsynthetic substance allowed for use in organic crop production as a post-harvest treatment to control fungal diseases. Natamycin is a naturally occurring compound produced by soil bacteria. Natamycin is used in agriculture and in food processing for its antifungal properties as either a fungicide or fungistat. These properties are effective over a wide pH range. To enhance review of this petition, the NOSB solicited a technical report on natamycin.[6] This report indicates that natamycin is regulated by both the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA). Commercial applications of natamycin in crop, livestock, and food production can be grouped into three basic categories: Pre- or post-harvest agricultural fungicide; livestock medication; or as a preservative in processed foods. For example, natamycin may be used in mushroom production to control fungal diseases and in post-harvest handling treatment of raw agricultural commodities, such as fruits, to prevent spoilage. Natamycin is also used in animal health for treating ringworm and candidosis in horses and cattle. Natamycin is approved as a preservative in certain processed foods, such as cheese, yogurt, and certain beverages.

The 2016 natamycin petition is the second natamycin petition received and reviewed by the NOSB. In March 2007 the NOSB reviewed a petition on natamycin for use as a nonsynthetic, nonagricultural substance in organic processing and handling, to prevent or delay mold growth in packaged baked goods. After reviewing the 2007 petition, the NOSB considered adding natamycin to the National List in § 205.605(a), Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).'' At the conclusion of the March 2007 meeting, the NOSB did not recommend adding natamycin to

[1] Sodium citrate petition: *https://www.ams.usda.gov/sites/default/files/media/Sodium%20Citrate%20Crops%20Pet.pdf.*

[2] NOSB recommendation for sodium citrate: *https://www.ams.usda.gov/sites/default/files/media/CSSodiumCitratePetRecOct2018.pdf.*

[3] Technical Evaluation Report for sodium citrate (for used in crop production): *https://www.ams.usda.gov/sites/default/files/media/SodiumCitrateCropsTR20171218.pdf.*

[4] Guidance on determining whether a substance is synthetic or non-synthetic is described in document NOP 5033–1, Guidance Decision Tree for Classification of Materials as Synthetic or Nonsynthetic: *https://www.ams.usda.gov/sites/default/files/media/NOP-Synthetic-NonSynthetic-DecisionTree.pdf.*

[5] Natamycin petition: *https://www.ams.usda.gov/sites/default/files/media/Natamycin%20NOP%20Petition%20-%2001%20Sep%2016.pdf.*

[6] Natamycin Technical Evaluation Report, November 2017: *https://www.ams.usda.gov/sites/default/files/media/NatamycinTR20171102.pdf.*

§ 205.605(a). Some comments received by the NOSB during the 2007 meeting stated opposition to allowing natamycin in organic handling because the commenters believed that natamycin is an antibiotic, and its use as a preservative would not be compatible with organic standards. In 2007, the NOSB determined natamycin to be a nonsynthetic substance and that its use, as petitioned, was not compatible with organic handling standards.

At its October 26, 2018, public meeting, the NOSB considered the second natamycin petition as a nonsynthetic substance in organic crop production and received public comment. In its review, the NOSB also considered a November 2, 2017, technical evaluation report on natamycin that described its manufacture, industry uses, regulation, and chemical properties.

After considering the petition, technical report, and public comments, the NOSB determined (1) that natamycin is a nonsynthetic substance and (2) that the use of natamycin as a post-harvest treatment on harvested crops met the OFPA criteria for prohibitions on natural substances because its use could negatively impact human health by increasing fungal resistance to natamycin. As such, its use would not be consistent with organic farming or handling. Therefore, the NOSB recommended adding natamycin to § 205.602 as a nonsynthetic substance prohibited for use in organic crop production.[7]

AMS has reviewed the NOSB recommendation on natamycin and agrees that natamycin meets the OFPA criteria for listing as a prohibited substance in organic crop production. AMS proposes addressing this NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend the National List by adding natamycin to § 205.602 as a prohibited nonsysthetic substance. This action would prohibit any use of natamycin in organic crop production, including both pre-harvest and post-harvest treatment.

§ 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as ''Organic.''

Tamarind Seed Gum

The proposed rule would amend the National List to add tamarind seed gum as a non-organic agricultural substance listed in § 205.606 for use in organic handling.

TABLE 4—PROPOSED RULE ACTION FOR TAMARIND SEED GUM

Current rule:	N/A
Proposed rule action:	Add tamarind seed gum to § 205.606.

On February 13, 2017, AMS received a petition[8] to add tamarind seed gum to the National List in § 205.606 for use in organic handling as a thickener, stabilizer, or gelling agent in processed foods. Tamarind seed gum is a plant polysaccharide (polymer of carbohydrate molecules) derived from the kernel, or endosperm, of seeds of the tamarind tree. Tamarind seed gum is Generally Regarded as Safe (GRAS) for several applications as a food additive—specifically in foods such as cheese, fruit preserves, sauces, and ice cream.

To enhance its review of this petition, the NOSB solicited a technical report[9] on tamarind seed gum. This report indicated that tamarind seed gum is regulated by the FDA as a GRAS food additive and specifically, as a stabilizer and thickener as defined by 21 CFR 170.3.

At its October 26, 2018, public meeting, the NOSB considered the petition on adding tamarind seed gum to the National List for use in organic handling. As part of its review, the NOSB considered a February 21, 2018, technical report on tamarind seed gum that described its manufacture, industry uses, regulation, and chemical properties. After considering the petition, technical report, and public comments on tamarind seed gum, the NOSB determined that the allowance of non-organic tamarind seed gum for use as an ingredient in organic handling is consistent with the OFPA evaluation criteria for National List substances. The NOSB's evaluation also determined that tamarind seed gum provides different processing characteristics and texture compared to the gums currently on the National List. Subsequently, the NOSB recommended[10] adding tamarind seed gum to § 205.606 as a nonorganically produced agricultural product allowed as ingredients in or on processed products labeled as ''organic.''

AMS has reviewed the NOSB recommendation on tamarind seed gum and agrees that tamarind seed gum satisfies the OFPA evaluation criteria for an allowed substance on the National List. Subsequently, AMS proposes addressing this NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend the National List by adding tamarind seed gum to § 205.606 as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as ''organic.'' This action would require organic handlers who use tamarind seed gum to source an organic form of the ingredient before using any nonorganic source of this ingredient. If the organic form of the ingredient is not commercially available, the nonorganic form may be used.[11]

III. Related Documents

On August 9, 2018, a document was published in the **Federal Register** (83 FR 39376) announcing the fall 2018 NOSB meeting. One purpose of the meeting was to deliberate on recommendations on substances petitioned as amendments to the National List.

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List and directs petitioners to obtain the petition procedures from USDA. The current petition procedures published in the **Federal Register** (81 FR 12680, March 10, 2016) for amending the National List can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

A. Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has

[7] NOSB natamycin recommendation: *https://www.ams.usda.gov/sites/default/files/media/CSNatamycinPetRecOct2018.pdf.*

[8] Tamarind seed gum petition: *https://www.ams.usda.gov/sites/default/files/media/TamGumPetition.pdf.*

[9] Tamarind seed gum technical evaluation report, February 2018: *https://www.ams.usda.gov/sites/default/files/media/TamarindSeedGumTR2018221.pdf.*

[10] NOSB recommendation on tamarind seed gum: *https://www.ams.usda.gov/sites/default/files/media/HSTamarindSeedGumPetRecOct2018.pdf.*

[11] See 7 CFR 205.606 and 7 CFR 205.2 for definition of ''Commercially available.''

exempted from Executive Order 12866. Additionally, because this proposal does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses. The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $750,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, ''All other professional, scientific and technical services.'' For this category, the small business threshold is average annual receipts of less than $15 million.

AMS has considered the economic impact of this proposed rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the United States would be considered small entities. According to the 2017 Census of Agriculture, 18,166 organic farms in the United States reported sales of organic products and total farmgate sales in excess of $7.2 billion.[12] Based on that data, organic sales average $400,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $750,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database, there are 18,105 organic handlers that are certified under the USDA organic regulations (10,184 of these handlers are based in the U.S).[13] The Organic Trade Association's 2018 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has 78 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately $4,200 in certification fees in order to exceed the SBA's small business threshold of $15 million. The costs for certification generally range from $500 to $3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of two additional substances in organic crop production and organic handling. Adding two substances to the National List would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. This action would also prohibit the use of natamycin in organic crop production due to its possible impact on human health. AMS reviewed comments submitted to the NOSB indicating that there is little to no use of natamycin currently in organic crop production. Therefore, AMS concludes that the economic impact of this addition, if any, would be minimal because there are other practices and substances that provide effective fungal control in organic crop production. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this proposed rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the

[12] U.S. Department of Agriculture, National Agricultural Statistics Service. 2017 Census of Agriculture. *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/*. The number of organic farms includes both certified and exempt farms.

[13] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/*. Accessed on June 7, 2019.

EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add two substances to the National List and notify organic producers and certifying agents of AMS's decision not to add sodium citrate to the National List. A 60-day period for interested persons to comment on this rule is provided.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Amend § 205.601 by redesignating paragraphs (j)(2) through (11) as paragraphs (j)(3) through (12) and adding new paragraph (j)(2) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(j) * * *

(2) Blood meal—made with sodium citrate.

* * * * *

■ 3. Amend § 205.602 by redesignating paragraphs (e) through (j) as paragraphs (f) through (k) and adding new paragraph (e) to read as follows:

§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

* * * * *

(e) Natamycin.

* * * * *

■ 4. Amend § 205.606 by redesignating paragraphs (s) through (w) as paragraphs (t) through (x) and adding new paragraph (s) to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."

* * * * *

(s) Tamarind seed gum.

* * * * *

Dated: October 11, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–22639 Filed 10–17–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2018–0037]

RIN 0584–AE62

Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP); Reopening of Comment Period

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Nutrition Service (FNS, or the Agency) proposed to make changes to the Supplemental Nutrition Asisstance Program (SNAP) regulations to refine categorical eligibility requirements based on receipt of Temporary Assistance for Needy Families (TANF) benefits. To aid the public's review of the rulemaking, FNS is providing an informational analysis regarding the potential impacts on participants in the National School Lunch Program and School Breakfast Program. The agency is extending the comment period to provide the public an opportunity to review and provide comment on this document as part of the rulemaking record. Comments that do not pertain to the issues referenced in this additional document are not germane to the extended comment period and will not be accepted.

DATES: The comment period on the proposed rule that published July 24, 2019 (84 FR 35570) is reopened. Written comments must be received on or before November 1, 2019 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by the following method:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Dr., Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION: On July 24, 2019, FNS published in the **Federal Register** (84 FR 35570) a proposed rule to refine categorical eligibility requirements based on receipt of TANF benefits. Specifically, FNS proposed: (1) To define ''benefits'' for categorical eligibility to mean ongoing and substantial benefits; and (2) to limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare. The proposed rule would also require State agencies to inform FNS of all non-cash TANF benefits that confer categorical eligibility. FNS has provided an additional supplemental analysis on *www.regulations.gov* regarding the potential impacts on participants in the National School Lunch Program and School Breakfast Program. This informational analysis, which was prepared upon request after the proposed rule was published, is being posted to the docket in the interest of public transparency. This analysis has now been published on *www.regulations.gov* as part of Docket FNS–2018–0037. FNS is extending the comment period to provide the public an opportunity to review and provide comment on this document as part of the rulemaking record. This document notifies the public FNS is reopening the comment period. For additional information, see the proposed rule published July 24, 2019 (84 FR 35570).

Dated: October 11, 2019.

Stephen L. Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2019–22783 Filed 10–17–19; 8:45 am]

BILLING CODE 3410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R09–RCRA–2019–0491; FRL–10001–19–Region 9]

California: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to authorize changes California has made to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA reviewed California's application for authorization of these changes and determined that the changes satisfy all requirements. EPA seeks public comment prior to taking final action.

DATES: Comments on this proposed rule must be received by November 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R09–RCRA–2019–0491], at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3364 or by email at *Amaro.Laurie@epa.gov*. You may also view California's application at: California Environmental Protection Agency, Department of Toxic Substances Control, 1001 ''I'' Street, 11th Floor, Sacramento, CA 95814, Attention: Carmela Torres, Phone (916) 322–7893, from 8 a.m. to noon and 1 p.m. to 5 p.m., Monday through Friday (appointment preferred but not required).

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in California, including the issuance of new permits implementing those requirements, until the state is granted authorization to do so.

B. What decisions has EPA made in this rule?

On July 10, 2019, California submitted a program revision application to EPA seeking authorization of changes to its hazardous waste management program that correspond to certain Federal rules related to the universal waste rule initially promulgated by EPA on May 11,1995 (63 FR 60 FR 25492) and amended on July 6, 1999 (64 FR 36466), December 24, 1998 (63 FR 71225), August 5, 2005 (70 FR 45508) and July 14, 2006 (71 FR 40254). These regulatory changes are also known as RCRA rule checklists 142A, 142B, 142D, 142E, 176, 181 and 209. EPA concludes that California's application to revise its authorized program meets all statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant California final authorization to operate its hazardous waste program with the changes described in the authorization application dated July 10, 2019, and as outlined below in Section F of this document.

California has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

If California is authorized for the changes described in the State's authorization application, these changes would become part of the authorized State hazardous waste program and would therefore be federally enforceable. California will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would retain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized California program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which California is being authorized by today's action are already effective and are not changed by today's action.

D. What happens if EPA receives comments that oppose this proposed action?

EPA will consider all comments received during the comment period and address them in a final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has California previously been authorized for?

California initially received final authorization for the state hazardous waste management program on July 23, 1992, effective August 1, 1992 (57 FR

32726). EPA granted final authorization for changes to California's program on the following dates: September 26, 2001 (66 FR 49118), effective September 26, 2001 and October 7, 2011 (76 FR 62303), effective October 7, 2011.

F. What changes is EPA authorizing with today's action?

EPA proposes to determine, subject to our consideration of any adverse written comments, that California's hazardous waste program revisions are equivalent to, consistent with and no less stringent than the Federal program and therefore satisfy all the requirements necessary to qualify for final authorization.

Therefore, EPA is proposing to authorize California's program changes to adopt a universal waste program as outlined in the following table.

STATE ANALOGUES TO THE FEDERAL PROGRAM

Description of Federal requirement (checklist, if applicable)	**Federal Register** date and page	Analogous state authority California code of regulations (CCR) title 22, division 4.5 and health and safety code
40 Code of Federal Regulations (CFR) part 273, subparts A through G—Standards for Universal Waste [a] (Checklists 142 A, B, D, E, 176, 181, 209, 215) [b].	60 FR 25492, May 11, 1995, 63 FR 71225, December 24, 1998; 64 FR 36466, July 6, 1999; 70 FR 45508, Aug. 5, 2005; 71 FR 40254, July 14, 2006.	22 CCR 66273, October 22, 2018. Health & Safety Code 25201.16, October 3, 2001.

[a] Because several definitions in the state universal waste regulations do not have Federal counterparts, the state cited additional Federal regulations at 40 CFR 260.1, 260.10, 261.4, 262.81, 264.142 and 270.2 in support of its application for authorization of the State's universal waste program.

[b] Although Checklist 214 is mentioned in the State Attorney General's Statement, EPA is not including it here because the typographical and spelling corrections made in this checklist are not relevant to the State's regulatory language.

G. Where are the revised state rules different from the Federal rules?

EPA considers the following California requirements to be beyond the scope of the Federal program:

- Notifications. Small quantity handlers of universal waste must notify the State of hazardous waste activity. Federal regulations in 40 CFR 273.12 exempt small quantity handlers of universal waste from notification of hazardous waste activity.
- Mercury-added lamps toxicity. Stricter toxicity standards in California Code of Regulations title 22 division 4.5, chapter 11 cause some mercury-added lamps not defined as Federal hazardous waste to be covered under the California hazardous waste and universal waste programs.
- California-only universal wastes. California has added the following non-RCRA waste streams to its universal waste program: Aerosol cans, cathode ray tubes (CRTs), CRT glass and electronic devices.

Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with state law, they are not RCRA requirements.

In the State's application, it identified the consolidation of large and small quantity universal waste handler requirements resulting in the application of standards to handlers that would otherwise be exempt from the requirement as broader in scope. However, EPA has determined that this requirement is more stringent.

H. Who handles permits after the authorization takes effect?

California will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g)(1), gives EPA the authority to issue or deny permits or parts of permits for requirements for which the state is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in California for the new or revised HSWA standards until California has received final authorization for such new or revised HSWA standards. EPA and California have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

I. How does today's action affect Indian country (18 U.S.C. 1151) in California?

California is not authorized to carry out its hazardous waste program in Indian country within the state. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and is EPA codifying California's hazardous waste program as authorized in this rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not proposing to codify the authorization of California's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart F for this authorization of California's program changes until a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action (RCRA state authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). As explained above, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization, as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing Federal requirements, and impose no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898. 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 document 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 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). This action nevertheless will be effective 60 days after the final approval is published in the **Federal Register**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 20, 2019.

Deborah Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 2019–22703 Filed 10–17–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3500

[LLW0320000 L13300000 PP0000 20X]

RIN 1004–AE58

Non-Energy Solid Leasable Minerals Royalty Rate Reduction Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations to revise the process for lessees to seek and for the BLM to grant reductions of rental fees, royalty rates, and/or minimum production requirements associated with non-energy solid leasable minerals. The proposed rule would streamline the process for such reductions for non-energy solid minerals leased by the Federal Government and would codify the BLM's authority to issue an area- or industry-wide reduction on its own initiative. Existing regulatory requirements are overly restrictive, inflexible, and burdensome. A report from the Senate Committee on Appropriations on the 2019 Department of the Interior, Environment, and Related Agencies Appropriations Bill encouraged the BLM to work with soda ash producers to reduce the Federal royalty rate, as appropriate. The proposed rule would give the BLM more flexibility to respond to changing market dynamics by improving the BLM's ability to boost production and support development of the Federal mineral estate when deemed necessary.

DATES: Please submit comments on or before December 17, 2019. As explained later, this proposed rule would include revisions to information collection requirements that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the revised information collection requirements in this proposed rule, please note that such comments should be sent directly to the OMB, and that the OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection revisions is best assured of being given full consideration if the OMB receives it by November 18, 2019.

ADDRESSES: You may submit comments, identified by the number RIN 1004–AE58, by any of the following methods:

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW, Washington, DC 20240, Attention: RIN 1004–AE58.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE, Room 2134LM, Washington, DC 20003, Attention: Regulatory Affairs.

Federal eRulemaking portal: http://www.regulations.gov. In the Searchbox, enter ''RIN 1004–AE58'' and click the ''Search'' button. Follow the instructions at this website.

For Comments on Information-Collection Activities

Fax: Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, fax 202–395–5806.

Electronic mail: OIRA_Submission@omb.eop.gov.

Please indicate ''Attention: OMB Control Number 1004–0121,'' regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information collection burdens, you should provide the BLM with a copy at one of the street addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Please do not submit to OMB comments that do not pertain to the proposed rule's information collection burdens. The BLM is not obligated to consider or include in the Administrative Record for the final rule any such comments that you improperly direct to OMB, rather than the BLM.

FOR FURTHER INFORMATION CONTACT: Mitch Leverette, Division Chief of Solid Minerals, WO–320; 202–912–7113. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

You may submit comments, marked with the number RIN 1004–AE58, by any of the methods described in the **ADDRESSES** section. If you wish to comment on the information collection requirements, you should send those comments directly to the OMB as outlined (see **ADDRESSES**); however, we ask that you also provide a copy of those comments to the BLM.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and

2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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.

II. Background

Pursuant to the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181 *et seq.,* and other legal authorities, the BLM is authorized to lease deposits of certain minerals on lands owned by the United States. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1701 *et seq.,* charges the BLM with managing public lands in a manner that allows for responsible and appropriate resource development. In addition to commonly known energy resources, such as coal, oil, and gas, the MLA also authorizes the BLM to lease non-energy minerals, such as gilsonite, phosphate, sodium, potassium, and sulfur. The BLM regulations implementing this authority for solid minerals (other than coal) are found at 43 CFR part 3500—Leasing of Solid Minerals Other than Coal and Oil Shale. As described in section 3501.2, the subject minerals are ''minerals other than oil, gas, coal and oil shale, leased under the mineral leasing acts, and . . . hardrock minerals leasable under Reorganization Plan No. 3 of 1946, on any unclaimed, undeveloped area of available public domain or acquired lands where leasing of these specific minerals is allowed by law. Special areas identified in part 3580 of this title and asphalt on certain lands in Oklahoma also are leased under this part.'' Leasing these minerals on Federal land provides valuable revenue to the states and the Federal Government.

The United States was once the leading producer in the world of one such mineral, sodium carbonate (natural soda ash), before falling behind China in 2003.[1] This change stimulated a move in Congress to provide relief to American soda ash producers. The Soda Ash Royalty Reduction Act of 2006 (SARRA) (Pub. L. 109–338) prescribed a 2 percent royalty rate on sodium compounds produced from Federal land in the 5-year period beginning on October 12, 2006.[2] Additionally, the Helium Stewardship Act of 2013 (Pub. L. 113–40) included a provision that set a 4 percent royalty rate on soda ash for a 2-year period, which ended on October 1, 2015. These reductions have expired.

The minimum royalty rates for soda ash, along with other non-energy solid minerals on Federal lands are set in the MLA and BLM regulations (see 43 CFR 3504.21). The MLA authorizes the Secretary to establish royalty rates higher than the minimum, along with rental fees and minimum production requirements through regulation. The BLM sets the royalty rates for each lease at or above the specified minimum royalty rate (see 43 CFR 3504.22) based on current market conditions at the time of lease issuance, but those conditions may change over the life of the lease.

The BLM requests information from the public about current market conditions for soda ash and other types of non-energy solid leasable minerals

[1] Dennis S. Kostick, U.S. Geological Survey, 2005 *Minerals Yearbook:* Soda Ash 70.1 (2006).

[2] The SARRA required that the Department report to Congress on the impacts of the 2-percent royalty rate. The report to Congress, completed in 2011, concluded that while total sales revenues from Federal sodium leases increased, royalty revenues were significantly lower than they would have been absent the SARRA and production shifted away from state and private land leases onto Federal leases.

leased pursuant to 43 CFR part 3500, including non-energy solid leasable minerals identified as ''critical minerals'' in the ''Final List of Critical Minerals 2018,'' which was published in the **Federal Register** on May 18, 2018.

Section 39 of the MLA, 30 U.S.C. 209, authorizes the Secretary to reduce royalty rates and rental fees:

> The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, gilsonite, . . . phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgement it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein.

The BLM regulations contain a process for reducing royalty rates, along with rental fees and minimum production requirements, for non-energy solid minerals leased by the Federal Government in 43 CFR subpart 3513—Waiver, Suspension or Reduction of Rental and Minimum Royalties. The process described in this subpart of the regulations imposes requirements beyond what section 39 of the MLA, 30 U.S.C. 209, requires. The BLM has reviewed the existing regulatory requirements for non-energy solid minerals and has determined that the royalty reduction process codified in 43 CFR subpart 3513 is unnecessarily restrictive, inflexible, and burdensome. See § 3513.15 of the section-by-section discussion of this preamble for a more detailed discussion of the overly burdensome requirements that would be removed by this proposed rule.

The BLM promulgated the current regulations during the late 1990s to ''streamline and rewrite necessary regulations in plain English.'' [3] The effect of rewriting the language, however, introduced some substantive changes as compared with the previous regulations by requiring specific information for all applications that may not always be necessary. In contrast, previous versions of the royalty rate reduction regulations from 1946, 1964, and 1983 were more closely aligned with the statutory language and did not list specific data requirements for an application.[4]

This proposed rule would streamline the process to reduce rental fees, royalty rates, or minimum production requirements for all non-energy solid minerals leased by the Federal Government, without altering the substantive criteria that BLM will use to determine whether a reduction is appropriate. This proposed rule would remove unnecessary and overly burdensome requirements. Additionally, this proposed rule would codify in regulation the BLM's authority to implement area- or industry-wide reductions on the BLM's own initiative, thus giving greater effect in 43 CFR part 3500 to the broad authority that the MLA grants to the Secretary of the Interior to reduce rental fees, royalty rates, and/or minimum production requirements to promote development. This would improve the BLM's ability to provide relief to producers of non-energy solid leasable minerals, from burdens, such as geological hardships [5] and market transformations.

Congress introduced the American Soda Ash Competitiveness Act in 2017, which recommended setting the Federal royalty rate for soda ash at the minimum of 2 percent for a 5-year period. Although this proposed legislation was not enacted, the Senate Committee on Appropriations expressed concern about keeping the United States competitive in the global soda ash market, and encouraged ''the Bureau to work with soda ash producers to assist them in reducing royalty rates and [directing] the Bureau to take the necessary steps to reduce the Federal royalty rate for soda ash as appropriate.'' S. Rep. No. 115–276, at 14 (2018). The House also noted that ''the Committees are concerned about maintaining the United States' global competitiveness in the production of natural soda ash. The United States contains approximately 90 percent of the world's natural soda ash deposits, while many international competitors are producing synthetic soda ash using more energy and generating higher emissions than natural soda ash production. Therefore, the Committees expect the Bureau to consider using its authority to reduce the Federal royalty rate for soda ash to 2 percent.'' [6] This rulemaking is the first step the BLM must take in order to clarify its authority to reduce the royalty rate for soda ash in general (*i.e.,* for the industry as a whole or for a particular area) in the absence of an individual lease-by-lease application submitted by a leaseholder for specific leases in an operation. Under the proposed rule, the BLM could consider these recommendations and move forward with area- or industry-wide royalty rate reductions.

The BLM has a history of receiving applications requesting royalty rate reductions for commodities such as lead-zinc, gilsonite, and potash. Since the early 1990's the BLM has received between ten and fifteen applications seeking a reduction, and approximately half of those were considered complete applications. The BLM has approved about five applications for reduction since 1993. Although the BLM has no history of implementing area- or industry-wide royalty rate reductions in the context of non-energy solid leasable minerals under 43 CFR part 3500, the BLM has reduced royalty rates on an area-wide basis for coal leases under section 39 of the MLA, 30 U.S.C. 209. As an example, the BLM reduced the royalty rate for coal leases in a specific area of North Dakota in the spring of 2019 to 2.2 percent as a ''category 5'' reduction due to market conditions.

Executive Order 13817, ''A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals'' emphasizes the need for the United States to domestically source critical minerals. The Secretary of the Interior published a ''Final List of Critical Minerals'' on May 18, 2018. This list includes commodities that can be leased as non-energy minerals, such as potash and metals like lithium or rare earth elements on acquired lands. This proposed rule would meet the goals of E.O. 13817 by improving the BLM's ability to ensure continued production of critical minerals on public lands.

Over the past two decades, U.S. natural soda ash production has grown at an average compound annual rate of 0.9 percent, from 11.1 million short tons

[3] ''The purpose of this rule is to comply with President Clinton's government-wide regulatory reform initiative to eliminate unnecessary regulations, and streamline and rewrite necessary regulations in plain English.'' 64 FR 53,512, 53,512 (Oct. 1, 1999).

[4] ''In order to encourage the greatest ultimate recovery of the leased minerals, and in the interest of conservation, whenever the authorized officer determines it is necessary to promote development or finds that leases cannot be successfully operated under the terms provided therein, the rental or minimum royalty payments may be waived, suspended or reduced, or the rate of royalty reduced.'' 43 CFR 3503.2–4(a) (1998). *See also* 43 CFR 3503.3–1(d) (1983); 43 CFR 3102.3(a) (1964); 43 CFR 191.25 (1946).

[5] Geological hardships are circumstances that may slow or stop mining in a given area. These hardships may include such things as a deposit thinning, becoming exhausted, or changing in composition, or running into an underground barrier such as a structure that compromises the integrity and or grade of the deposit. These often cannot be foreseen at the time of leasing.

[6] An Explanatory Statement for the Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2018.

(MMst) in 1998 to 13.2 MMst in 2018.[7] During this period, however, Chinese synthetic soda ash production grew at a 6.4 percent compound annual rate, rising from less than one-quarter of world production to nearly half.[8] China has used the Hue and Solvay synthetic processes to ramp up its soda ash production, surpassing U.S. total production in 2003,[9] and doubling U.S. volumes in 2011.[10]

Although China's soda ash production has largely focused on producing glass for its automotive and construction industries (among others), its rise has reduced the ability of U.S. producers to satisfy the burgeoning demand for the mineral. It has also caused the U.S. share of world soda ash production to decline from 31 percent of the world total in 1998 to 22 percent in 2018. Moreover, while China's more expensive synthetic soda ash production has largely gone to its domestic manufacturing industry, relatively low-cost natural soda ash produced from Turkey's significant trona ore deposits compete directly with U.S. exports to countries in the European Union and elsewhere. Recent announcements point to soda ash production expansions in Turkey, as well as in Belarus, Kazakhstan, Uzbekistan, India, Thailand, and Pakistan.[11]

It is the BLM's view that this proposed rule is necessary in light of the world market developments such as those described above to keep the United States competitive in the world markets of non-energy solid leasable commodities. The BLM also views the proposed rule as necessary to promote development of non-energy solid leasable mineral resources in accordance with the MLA, particularly during periods of market fluctuation. For example, from 2008 to 2010, the price of soda ash, as with many other commodities, spiked and then dropped precipitously, threatening the industry's ability to operate successfully while paying all related royalties and taxes. The changes in this proposed rule would not adversely impact the processing time for royalty rate reduction applications. On the contrary, the proposed changes would reduce the time required for a lessee to compile an application and it would be easier for lessees to achieve application completeness. Moreover, the rule would allow the BLM to implement reductions industry-wide or area-wide of its own initiative in accordance with section 39 of the MLA, 30 U.S.C. 209.

III. Discussion of the Proposed Rule

The regulations in 43 CFR part 3500 are authorized by the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) and other statutory authorities. The proposed rule would streamline the process to apply for rental fee, royalty rate, and minimum production requirement reductions for non-energy solid mineral leases. This proposed rule would also reduce the burden on lease holders by simplifying the regulatory requirements so as to better align the regulations with the statute.

You may find the BLM regulations that implement this authority for solid minerals (other than coal) in 43 CFR subpart 3513—Waiver, Suspension or Reduction of Rental and Minimum Royalties.

§ 3513.11 May BLM relieve me of the lease requirements of rental, minimum royalty, or production royalty while continuing to hold the lease?

Section 3513.11 states that the BLM has a process that allows for temporary relief from the rental, minimum royalty, or production royalty provisions in a lease. The BLM considers applications submitted under section 3513.15 on a case by case basis based on the data in the application for lease requirement relief. This existing section introduces subpart 3513, which explains that process in greater detail. The Non-Energy Solid Leasable Handbook, H–3500–01, includes guidance for processing applications for temporary relief from the rental, minimum royalty, or production royalty provisions.

This proposed rule would add to section 3513.11 a citation to the relevant section of the Mineral Leasing Act. 30 U.S.C. 209. This is not a substantive change and would have no impacts beyond providing additional information.

§ 3513.15 How do I apply for reduction of rental, royalties or minimum production?

Section 3513.15 sets out the information that a lessee must include in an application for BLM to make its decision. The BLM needs the information provided in this application to determine whether the request satisfies the reduction criteria described in 43 CFR 3513.12.

This proposed rule would remove the requirement to submit two copies of an application because two copies are no longer necessary with current technology. When the BLM promulgated these regulations, lessees submitted applications to the BLM via hard copy mail and the BLM used both paper copies during its processing. The BLM now receives and processes these applications electronically, or the BLM is able to make physical or electronic copies of the paper submissions.

Paragraph 3513.15(d) in the current regulations requires an application to include a description of the lands for which the reduction would apply. This proposed rule would revise this requirement to be applicable only when the application is for a portion of the lease or leases. If the application is for the lease in its entirety, the BLM already has that information on hand and a land description would not be necessary for that application. This proposed revision would make the application easier to complete, which would help improve processing timeliness.

This proposed rule would remove paragraphs (f) and (h) of this section, which require a tabulated statement of the leasable minerals mined for each month, covering at least the last twelve months before a lessee files an application; the average production mined per day for each month; a detailed statement of expenses and costs of operating the entire lease; and the income from the sale of any leased products. This information would not be required because the BLM already knows the quantity of leasable minerals that the lessees are mining on each lease. The BLM can extrapolate the average production mined per day from production records and mine plan reports that the lessee already submits to the BLM and Office of Natural Resources Revenue (formerly Mineral Management Service) for royalty payment purposes and to prove they are meeting minimum production requirements as indicated on their lease form in accordance with 43 CFR 3504.20. The detailed statement of expenses and costs is extraneous information and is not necessary for the application because the reduction is based on market conditions and geologic interferences that are not tied to past costs and expenses (for example, the applicant's utility costs will not change with the commodity's market fluctuations, so we know their costs to run the operation will not decrease at the same rate that their income from the commodity price decreases, making them exclusive values). Removing this unnecessary requirement would also

[7] U.S. Geological Survey (USGS) *Minerals Yearbook* data, editions from 2002 through 2018.

[8] USGS *Minerals Yearbook* data through 2017, with National Bureau of Statistics of China monthly data from January through October 2018 used to project the 2018 total.

[9] Dennis S. Kostick, U.S. Geological Survey, 2005 *Minerals Yearbook:* Soda Ash 70.1 (2006).

[10] Wallace P. Bolen, U.S. Geological Survey, 2014 *Minerals Yearbook:* Soda Ash 70.1 (2015).

[11] Wallace P. Bolen, U.S. Geological Survey, 2016 *Minerals Yearbook:* Soda Ash 70.1 (2016).

make the application easier to complete, further improving the timeliness of the reduction process.

Proposed section 3513.15(g) would contain the requirement found in section 3513.15(i) of the current regulations. However, instead of requiring ''all facts'' showing why the lessee cannot successfully operate a mine, the proposed rule would require the application to provide ''justification'' showing why the lessee cannot successfully operate a mine under the existing royalty or rental. The proposed rule provides a more measured requirement for the applicant to demonstrate why they are unable to meet the terms of the lease. It is still imperative for the application to provide sufficient justification for the BLM to make its determination in each applicant's case. While this is a change to the wording of the regulation, the BLM does not expect any substantive impact from this revision because the applicant will still need to demonstrate why they cannot operate the lease under current conditions. Data that may be seen in these types of applications include: geologic maps and reports about hazards being encountered, cost per ton of product, revenue per ton of product, or reports discussing any financial hardship an individual mine is facing.

This proposed rule would also remove paragraphs (j) and (k) of section 3513.15, which require full information as to whether the lessee pays royalties or payments out of production to anyone other than the United States, the amounts paid and efforts the lessee has made to reduce them, and documents demonstrating that the total amount of overriding royalties paid for the lease will not exceed one-half the proposed reduced royalties due the United States. The BLM expects that the application would disclose any relevant information regarding overriding royalties under the informational requirements of proposed sections 3513.15(g) and (h) because BLM has authority to order the operator to suspend or reduce an overriding royalty as stated in 43 CFR 3504.26. The proposed removal of these two paragraphs would make the application easier to complete, which would help improve the timeliness of the reduction process.

Proposed section 3513.15(h) would contain the requirements of existing section 3513.15(l) that the applicant include any additional information the BLM requires to determine if the applicant meets the standards of section 3513.12. Section 3513.12, which the proposed rule would not amend, explains the criteria that the BLM considers when approving a waiver, suspension, or reduction in rental, or minimum royalty, or a reduction in the royalty rate.

§ 3513.17 How will the BLM implement a reduction of rental, royalties or minimum production?

This proposed rule would add a new section 3513.17, which explains how the BLM would implement a reduction on its own initiative. Prior to 1999, there was no requirement that a reduction would be temporary.[12] Placing timing or tonnage constraints on the reduction would ensure that the rule is applied when necessary to continue development, but not longer than necessary. As markets fluctuate and lessees overcome geologic hardships, the need for a reduction may end. When the term of the reduction ends, the royalty can increase to its original rate, thereby increasing revenue to the United States.

Section 39 of the MLA, 30 U.S.C. 209, authorizes the Secretary to reduce royalty rates and rental fees ''whenever in his judgement it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein.'' 30 U.S.C. 209. This provision of the MLA authorizes the Secretary to provide across-the-board royalty rate relief for all lessees who are developing non-energy minerals leased by the Federal Government, as long as the Secretary finds that it is necessary to do so in order to promote development. Promoting development will help ensure operations can continue, preserving jobs and helping domestic commodities from those operations to remain in the market. The proposed section is outlined as follows:

Proposed section 3513.17(a) would implement this provision in the regulations, allowing the BLM to reduce rental fees, royalty rates, or minimum production requirements on its own initiative, whereas currently BLM can only provide rate relief upon application on a case by case basis. This proposed section would allow the BLM, on behalf of the Secretary of the Interior, to provide such relief in order to promote the overall development of a mineral resource for all leases in a geographic area or across an industry. This would more fully implement in 43 CFR part 3500 the broad authority that the MLA grants to the Secretary of the Interior for allowing these reductions in order to promote development, in addition to the reductions based on individual lease-by-lease applications. The BLM requests comment on the types of information the BLM should consider before implementing an area- or industry-wide reduction to promote development, including information related to quantifying the potential costs and benefits of this proposed rule with respect to NESL minerals other than soda ash.

Proposed paragraph (b) of section 3513.17 explains that the BLM may implement a reduction in response to an application submitted under section 3513.15. This is not a change from existing practice, but it would be included here to demonstrate the difference between the application process of section 3513.15 and a BLM-initiated reduction under proposed section 3513.17(a).

Proposed section 3513.17(c) describes how the BLM would limit reductions implemented under proposed section 3513.17.

Section 3513.17(c) would apply to reductions that the BLM implements on its own initiative under section 3513.17(a) and those that the BLM implements in response to an application under section 3513.17(b). Under proposed paragraph (c) of this section, reductions would be limited to not more than 10 years from the date that BLM implements a reduction or not more than a specific tonnage that the lessee produces, as determined by the BLM. The BLM would determine the specific time or tonnage limit appropriate for each reduction on a case-by-case basis. The BLM would determine durations of reductions and tonnage limits based on projected market conditions or geologic hazard attributes for each application or area. If a reduction is in response to an application under 3513.17(b), the reason for the application will help determine the appropriate term or tonnage limit of the reduction.

Prior to 1999, there was no requirement in the BLM's regulations that a reduction would be temporary, though in practice they generally are.[13] Placing timing or tonnage constraints on the reduction would ensure that the BLM would allow reductions when necessary to continue or promote development, but no longer. At the end of the reduction period, the royalty, rental, or minimum production requirements would increase to their original rates. At that time, the lessee would operate under the original lease terms.

The BLM would generally set a time limit when issuing an area- or industry-

[12] *See* 43 CFR 3503.2–4 (1998).

[13] *See* 43 CFR 3503.2–4 (1998).

wide reduction to promote development. The proposed rule would limit the reduction to not more than 10 years, but the BLM may determine a shorter period is appropriate. Market conditions can fluctuate over a 10-year period and a longer period in a single grant would not be appropriate. Past legislation for reductions expired after 5 years, so a 10 year term was chosen as a maximum with the option to make the term shorter if applicable. The BLM requests comments on the 10-year limit for reductions.

When a lessee submits an application under section 3513.15, it might be more appropriate to apply a fixed tonnage rather than applying a time limit.

The BLM would calculate a fixed tonnage using known, estimated, or historic production rates and extrapolating total tonnage verified by BLM inspection personnel (see 43 CFR subparts 3597 and 3598). Estimated production will be determined based on current mining style, rock type, and operator production capabilities according to their approved mine plan on a case by case basis. The BLM would extrapolate the production rates over a fixed period to determine the total tonnage that would qualify for a royalty rate reduction. The BLM could apply fixed tonnage constraints for a reduction to areas of geologic concern where production rates may differ.

Under the existing regulations, the BLM has often used a fixed tonnage when applying a constraint to the royalty rate reduction for a lease. The tonnage constraint ensures that the lessee produces the amount of a mineral projected over a particular period, but prevents the lessee from refocusing production exclusively to an area with a reduced royalty rate and producing a greater amount of the mineral at the reduced royalty rate.

While there is no specific process in the regulations for an extension of these constraints, the BLM would not limit the number of times lessees may apply for a reduction under section 3513.15. The BLM requests comment on the implications of a fixed tonnage for reductions.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it may raise novel legal or policy issues.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The proposed rule would reduce duplicative information requirements for non-energy solid leasable minerals operators who apply for a reduction of rental, royalties or minimum production. The proposed rule would also more fully implement the Secretary's authority under section 39 of the MLA, 30 U.S.C. 209, to provide these reductions to promote development.

The BLM reviewed the requirements of the proposed rule and determined that it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the Regulatory Impact Analysis (RIA) prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE58'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This proposed rule is an E.O. 13771 deregulatory action. As discussed in Section 1 and detailed in Section 3, the estimated cost of the proposed rule is negative (a net benefit) in that it could produce benefit to society from greater overall non-energy solid leasable (NESL) minerals economic activity in an upper-bound scenario. This leads to the proposed rule having an annual net benefit (in $2018) of between *$0* and *$452,000* per affected entity that could be counted under Executive Order 13771, Section 2(c), as offsetting costs from any new regulation that the Department of the Interior may propose.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

Soda ash is the NESL mineral most likely to be impacted by BLM actions under the proposed rule. Four out of the five entities producing soda ash in the United States belong to large, foreign-owned holding companies whose operations expand across multiple industries including automobiles, electronics, clothes, food and beverages, cosmetics, soaps, detergents, and specialty chemicals. The fifth company, Genesis Energy, is an American firm based in Houston, Texas, that principally provides midstream energy infrastructure and logistics. The total number of employees for these entities are as follows:

- As of 2017, Solvay employed 6,400 people at its North American operations alone (includes industrial sites, formulation centers, research and formulation centers, and company headquarters); [14]
- As of publication of its 2018/2019 Annual Report, Tata Chemicals Limited had 4,698 employees worldwide. Tata Chemicals North America had 561 employees, but cannot be considered a small business when considering those employed by its foreign affiliates; [15]
- Genesis Energy had approximately 2,100 employees as of December 31, 2018; [16]
- As of December 31, 2018, Ciner Resources had an estimated 488 full-

[14] *https://www.solvay.us/en/company/about-solvay/solvay-in-usa/index.html.*

[15] *http://www.tatachemicals.com/upload/content_pdf/tata-chemicals-yearly-reports-2018-19.pdf.*

[16] *http://www.genesisenergy.com/wp-content/uploads/10k-18.pdf.*

time employees working for its U.S.-based operations.[17] However, it is part of holding company Ciner Group, which employs 10,500 people;[18] and

• Searles Valley is fully owned by India's Nirma Group, which has approximately 14,000 employees.[19]

Although the proposed rule could potentially affect small NESL entities producers outside of the soda ash industry, the BLM does not believe at this time that this is likely, based upon its analysis under Section 3.1 of the RIA. The BLM finds in this section that of all of the NESL mineral industries that could potentially be affected, only soda ash has experienced economic hardships of the kind and degree that would make it a likely candidate for industry-wide relief under § 3513.15(a).

The proposed rule is a deregulatory action that would reduce the paperwork and informational burden associated with applying for a rental, royalty, or minimum production reduction, and would reduce the royalties that lessees owe to the Federal Government based on the value of sales of minerals produced from Federal leases.

For the purpose of carrying out its review pursuant to the RFA, the BLM believes that the proposed rule would not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605. An initial regulatory flexibility analysis is therefore not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The BLM estimates that the proposed rule would provide an annual benefit of $619,000 on the economy. Please see the RIA for this rule for a more detailed discussion.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed rule is designed to lessen the burden on industry when necessary while still providing revenue to the government. This revenue is based on commodity price, adjusted royalty rate, and production amounts.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule may foster positive effects in each of these areas. This proposed rule would improve the BLM's ability to provide relief to the affected industry.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, tribal governments or the private sector. This proposed rule would only affect the BLM's process for providing reductions to rental, royalties or minimum production requirements of Federal leases. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The proposed rule is a deregulatory action and does not interfere with private property. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule would reduce burdens on industry and more closely align BLM regulations with the relevant statute. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. The proposed rule would apply to non-energy mineral leases on the Uintah and Ouray Indian Reservation, Hillcreek Extension, State of Utah (43 CFR 3503.11(b)), but no active leases have been present on those lands for approximately 15 years. There are no plans to grant new leases to any entity at this time, nor is there any entity interested in pursuing leases on those lands. This is a procedural rule that does not change any royalty rates. If the BLM implements an area- or industry-wide reduction under this proposed rule, the BLM would initiate tribal consultation, as appropriate, at that time.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule contains a new collection of information that the BLM will submit to the OMB for review and approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). As part of our continuing effort to reduce paperwork and respondent burdens, the BLM invites the public and other Federal agencies to comment on any aspect of the proposed information collection (IC) aspects of this proposed rule. You may send your comments directly to OMB and send a copy of your comments to the BLM (see the **ADDRESSES** section of this proposed rule). Please reference control number 1004–0121 in your comments. The BLM specifically requests comments concerning the need for the information, its practical utility, the accuracy of the agency's burden estimate, and ways to minimize the burden. You may obtain a copy of the supporting statement for the collection of information by contacting the Bureau's Information Collection

[17] *https://www.sec.gov/Archives/edgar/data/1575051/000157505119000032/cinerresourceslp-201810k.htm.*

[18] *http://www.cinergroup.com.tr/en/about-us.*

[19] *https://www.slideshare.net/nirali2301/final-ppt-of-nirma-67176929.*

Clearance Officer at (202) 912–7405. To see a copy of the entire IC request submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently under Review).

The PRA provides that 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 is required to make a decision concerning the collection of information contained in these proposed regulations 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by November 18, 2019. This guidance does not affect the deadline for the public to comment to the BLM on the proposed regulations.

Summary of Information Collection Activities

Title: Leasing of Solid Minerals Other Than Coal and Oil Shale.

OMB Control Number: 1004–0121.

Form: None.

Description of Respondents: Holders of Federal leases of solid minerals other than coal and oil shale.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Abstract: The BLM requests OMB to revise control number 1004–0121 in light of a proposed rule, which is intended to streamline applications for various forms of relief, including royalty rate reductions.

Estimated Number of Responses: 2.

Estimated Total Annual Burden Hours: 190.

Estimated Total Non-Hour Cost: $17,000.

Information Collection Request

Control number 1004–0121 authorizes the BLM to collect information pertaining to leases of solid minerals other than coal and oil shale. A regulation that this rulemaking would revise, *i.e.,* 43 CFR 3513.15, pertains to applications for reduction of rental, royalties, or minimum production requirements. This rulemaking would not affect the regulations in Subpart 3513 that pertain to applications for suspension of operations (*i.e.,* sections 3513.22 and 3513.32).

In this proposed rule, the BLM would revise control number 1004–0121 by dividing a single, previously approved information collection activity (*i.e.,* ''Application for Waiver, Suspension, or Reduction of Rental or Minimum Royalties, or for a Reduction in the Royalty Rate'') into the following 2 activities:

- Application for Reduction of Rental, Royalties, or Minimum Production Requirements; and
- Application for Suspension.

The proposed rule would revise section 3513.15(e) by requiring a description of the lands by legal subdivision only if the application is for a portion of a lease. In addition, the proposed rule would revise section 3513.15 by:

- Removing current paragraph (f), which at present requires a tabulated statement of the leasable minerals mined for each month covering at least the last twelve months before the filing of the application, and the average production mined per day for each month;
- Moving current paragraph (g) to new paragraph (f), but making no other changes to that paragraph, which requires that an application for relief from the minimum production include complete information about why minimum production was not attained;
- Removing paragraph (h), which currently requires a detailed statement of expenses and costs of operating the entire lease, and the income from the sale of any leased products;
- Revising current paragraph (i) by requiring ''justification'' rather than ''all facts'' showing why the operator cannot successfully operate the mines under the royalty or rental fixed in the lease and other lease terms;
- Moving current paragraph (i) to new paragraph (g);
- Removing current paragraph (j), which at present requires that an application for reduction of royalty must include full information about any royalties the lessee pays to anyone other than the United States, and a description of the efforts the lessee has made to reduce the other royalties;
- Removing current paragraph (k), which requires documents demonstrating that the total amount of overriding royalties the lessee will pay will not exceed one-half the proposed reduced royalties due the United States; and
- Moving current paragraph (l) to new paragraph (h).

While the proposed rule would not revise the regulations pertaining to applications for suspension found in 43 CFR 3513.20–3513.26 and 3513.30–3513.34, we are proposing the addition of an activity for such applications because the regulations that would be revised or replaced in this rulemaking cover both types of applications as indicated in the description of subpart 3513.

If finalized and approved by OMB, this information collection request would result in the net addition of 1 activity to the 32 activities currently approved under control number 1004–0121.

Hour and cost burdens to respondents include time spent for researching, preparing, and submitting information. The following table shows our estimates of the annual hour and hour-related cost burdens that this proposed rule would affect. The frequency of response for both of the information collection activities is ''on occasion.''

Type of response A.	Number of responses B.	Hours per response C.	Total hours (column B × column C) D.
Application for Reduction of Rental, Royalties, or Minimum Production Requirements 43 CFR 3513.15 and 3513.16	1	90	90
Application for Suspension 43 CFR 3513.16, 3513.22 and 3513.32	1	100	100
Totals	2		190

National Environmental Policy Act

The BLM has determined that the changes that would be made by this proposed rule are administrative or procedural in nature in accordance with 43 CFR 46.210(i) (''Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis

and will later be subject to the NEPA process, either collectively or case-by-case''). Therefore, the proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA).

We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. This proposed rule would amend only BLM regulations that could impact non-energy solid leasable minerals. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Author

The principal authors of this rule are: Alfred Elser, Division of Solid Minerals; Bill Radden-Lesage, Division of Solid Minerals; Adam Merrill, Division of Solid Minerals; Lindsey Curnutt, Division of Solid Minerals; Charles Yudson, Division of Regulatory Affairs; assisted by the Office of the Solicitor.

Dated: October 8, 2019.

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

List of Subjects in 43 CFR Part 3500

Government contracts, Hydrocarbons, Mineral royalties, Mines, Phosphate, Potassium, Public lands-mineral resources, Reporting and recordkeeping requirements, Sodium, Sulphur, Surety bonds.

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 3500 as follows:

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

■ 1. The authority citation for part 3500 continues to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1701 *et seq.;* and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

■ 2. Revise § 3513.11 to read as follows:

§ 3513.11 May BLM relieve me of the lease requirements of rental, minimum royalty, or production royalty while continuing to hold the lease?

Yes. The BLM has a process that may allow you temporary relief from these lease requirements (See 30 U.S.C. 209).

■ 3. Revise § 3513.15 to read as follows:

§ 3513.15 How do I apply for reduction of rental, royalties or minimum production?

You must submit your application with the following information for all leases involved:

(a) The serial numbers;

(b) The name of the record title holder(s);

(c) The name of the operator and operating rights owners if different from the record title holder(s);

(d) A description of the lands by legal subdivision, if the application is for a portion of the lease;

(e) A map showing the serial number and location of each mine or excavation and the extent of the mining operations;

(f) If you are applying for relief from the minimum production requirement, complete information as to why you did not attain the minimum production;

(g) Justification showing why you cannot successfully operate the mines under the royalty or rental fixed in the lease and other lease terms;

(h) Any other information BLM needs to determine whether the request satisfies the standards in § 3513.12 of this part.

■ 4. Add a new § 3513.17 to read as follows:

§ 3513.17 How will BLM implement a reduction of rental, royalties or minimum production?

(a) The BLM may reduce rental, royalties, or minimum production on its own initiative if the BLM determines, based on available information, that it is necessary to promote development of the mineral resource. Such a reduction may be for a specific geographic area, or on an industry-wide basis.

(b) The BLM may reduce rental, royalties, or minimum production in response to an application submitted under § 3513.15 if the application meets the criteria in § 3513.12.

(c) The BLM may grant a reduction not to exceed:

(1) 10 years from the date of implementation under paragraph (a) of this section, or

(2) 10 years from the date of the decision to approve the application submitted paragraph (b) of this section or for a maximum quantity of mineral production as determined by the BLM.

[FR Doc. 2019–22535 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 05–6, 17–105, 17–264; FCC 19–97]

Filing of Applications; Modernization of Media Regulation Initiative; Revision of Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Further Notice of Proposed Rulemaking, in which it sought comment on proposals to change the rules governing local public notice given by broadcast station applicants. These specific rule changes were proposed based on responses to the Notice of Proposed Rule Making in this proceeding.

DATES: Comments may be filed on or before November 18, 2019 and reply comments may be filed on or before December 2, 2019.

ADDRESSES: You may submit comments, identified by MB Docket No. 17–264, by any of the following methods:

• *Federal Communications Commission's website: http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.

• *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's

Secretary, Office of the Secretary, Federal Communications Commission.

• *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: 888–835–5322.

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: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418–2700. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), MB Docket Nos. 05–6, 17–105, 17–264; FCC 19–97, adopted and released on September 26, 2019. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/ndbedp.*

Initial Paperwork Reduction Act of 1995 Analysis

The *FNPRM* in document FCC 19–97 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. Section 311(a) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 311(a), provides that when there is filed with the Commission any application to which section 309(b)(1) applies, for an instrument of authorization for a station in the broadcasting service, the applicant shall give notice of such filing in the principal area which is served or is to be served by the station. The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given. Section 73.3580 of the Commission's rules, 47 CFR 73.3580, through which this statute was implemented, requires applicants for broadcast authorizations to notify the public of the filing of applications, with certain exceptions. Section 73.3580 applies to a broad range of applications, thus ensuring that the relevant communities to be served are made aware of applications and are given the opportunity to participate in the broadcast licensing process. As the rule has been revised, it has evolved into a number of different procedures depending on the type of station, applicant, or application. Generally, stations that are able to provide on-air public notice are required to do so. In many cases, but not all, these stations also must provide written public notice in a newspaper. In other cases where stations cannot provide on-air public notice, the station is required to provide only written public notice in a newspaper. The rule also prescribes the timing, frequency, duration, and content of both the on-air and written public notice and the type of newspaper in which the written notice must be published. Broadcasters have urged the Commission to update 47 CFR 73.3580 to allow applicants to notify the public of applications through the internet, in conjunction with broadcast announcements, and to consider simplifying the rule. The Commission released a 2017 Notice of Proposed Rule Making (*NPRM*), 32 FCC Rcd 8203 (2017), to seek comment generally on whether to update or even eliminate § 73.3580.

2. After considering the comments filed in response to the *NPRM,* the Commission proposes to eliminate the requirement to publish written public notice in newspapers, replacing newspaper publication with online written notice, and that online notice should link to the actual online application available in the Commission-hosted Online Public Inspection File (OPIF). It is believed that this rule change will reduce costs and burdens on applicants, while providing the public with superior information in the form of links to filed applications rather than summaries of those applications. The Commission further proposes that broadcasters currently required to give public notice by on-air announcements should make simpler and less frequent announcements that emphasize referring viewers and listeners to OPIF, and that the schedule of such announcements should be the same for all applicants, broadcast services, and application types. The Commission also proposes to streamline both on-air and online written public notices, and to replace detailed application descriptions with directions on how viewers and listeners can review applications in OPIF or Commission databases. Thus, the Commission's proposal would retain the basic structure of applicants' public notice obligations, but to modernize and streamline the process by substituting online notices for newspaper publication and by standardizing and simplifying those notices. The goal is to reduce burdens on broadcasters while providing the public with better and more accurate information. The Commission solicits comment as to these proposals, inviting commenters to opine as to whether some or all applicants should have different types of public notice obligations under new local public notice rules. The Commission also invites comment as to whether it should allow or require other means of public outreach, for example, social media accounts or mobile apps, as means of providing local public notice, and what the costs and benefits of such alternate means would be. Would use of these methods allow greater repetition of public outreach announcements without imposing significant additional burdens on broadcasters? Would it present challenges? Commenters should describe and, if possible, quantify the costs and benefits of the proposal(s) to broadcasters and the public. The Commission tentatively concludes that the proposed rules would be less costly to applicants and the public, would provide more effective public notice by improving the public's access to applications, and would satisfy the statutory notice requirement, and seeks comment on these tentative conclusions.

3. *Proposed elimination of public notice requirement.* Despite the Commission's suggestion in the *NPRM* to repeal 47 CFR 73.3580 in its entirety, the Commission tentatively concludes that it is statutorily required to retain

some form of local public notice. 47 U.S.C. 311 imposes a local public notice obligation on an applicant's part. The Commission therefore proposes not to repeal the rule

4. *Substitution of online written public notice for newspaper publication.* The Commission proposes to substitute online written public notice for the requirement that applicants publish notice of broadcast applications in a local newspaper. Under the proposed rule, members of the public would be directed to the application itself in the applicant's OPIF, providing more effective notice of filed applications, reducing costs for the applicants and the public, and providing the public with greater opportunities to discover applications that are relevant to the communities where they live. Under the proposal, those applicants currently required to give written public notice by newspaper publication would instead post notice of the filing of an application on an internet website and include a hyperlink to the actual application in OPIF.

5. Broadcasters favor elimination of the newspaper publication requirements, contending that newspaper publication is expensive and increasingly ineffective for giving public notice. Newspapers and their trade organizations argue in favor of retaining the newspaper publication requirements, arguing that most Americans read a newspaper in some form at least once a month, and that newspaper publication continues to be superior to online notice. These commenters also note that a sizable percentage of Americans lack internet access, especially older people and those living in rural areas. The Commission tentatively concludes that adopting online written notice as a substitute for newspaper publication would provide more effective notice for the public. Newspaper public notice imposes costs on both the applicant, which must pay for the notice, and the public, which must pay for a newspaper. Online written notice has the advantage of eliminating costs for applicants and consumers, except in the limited number of cases when an applicant may have to pay to post written notice on a third-party site. The proposed rule for online written notice would result in written notice being available for continuously for 30 days, compared to the current rule, which requires newspaper publication for no more than four days. Online publication also allows the public to take advantage of online search tools to automate tracking and discovering new applications in a manner that is not possible with newspaper written notice. Thus, the Commission tentatively concludes that posting written public notice online, in the manner described in detail below, would be more effective in reaching viewers than publishing in a print newspaper, and invites comment on this tentative conclusion. Commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

6. *Online notice requirements.* Given our tentative conclusion that online public notice of application filing is more effective than and should replace newspaper publication, we propose that in the majority of cases such public notice should be posted on the applicant station's, licensee's, or affiliated website; should remain posted continuously (24 hours a day, seven days a week); and should link directly to the noticed application in OPIF or, if the station has no OPIF, in Commission licensing databases. We believe that this will effectively provide public notice that is available to viewers and listeners at any time, compared to printed summaries published occasionally in newspapers. Newspaper notice was designed to provide the public with sufficient information to decide whether to travel to a station's main studio to view a physical copy of an application. Using online databases, the public is able to access actual filed broadcast applications at any time, day or night, merely by entering station information and clicking on links to applications filed by broadcast stations. Thus, the Commission believes that the goal of the local public notice rules should be to enable viewer and listener access to filed applications, rather than the current practice of summarizing applications and facilitating physical inspection. The Commission proposes the following specific rules for online public notice.

7. Sites for posting online notice. In order to make online public notice meaningful to the local communities served by broadcast stations, the Commission proposes that an applicant post online notice on its own website or one as closely affiliated with the station as possible, as that would be the first place listeners or viewers would be expected to turn for station information. The online public notice should be posted in a manner designed to promote discovery by the public in the principal area that is served or to be served by the station that is the subject of an application. Therefore, if the station to which the application pertains has a website, the notice should be conspicuously posted on that website's home page. In addition, the text of the notice should be apparent to the average internet user, with a reasonably large font in a contrasting color from the background. If the station does not have its own website but the station licensee has a website, the notice should be posted on the licensee's website's home page. If neither the station nor the station licensee maintains a website but the licensee's parent entity has a website, online notice must be posted on the home page of the parent entity website. In each case, the applicant-affiliated website must be publicly accessible, that is, able to be accessed without payment, registration, or any other requirement that the user provide information, or respond to a survey or questionnaire in exchange for being able to access the online notice. The Commission tentatively concludes that posting on such applicant-affiliated websites will be feasible in the vast majority of cases, and seeks comment on its conclusion, as well as on the details of its proposal. Do commenters believe that there are more effective sites on which to post online notice of application filings? Are there third-party local websites that would be just as effective as applicant-affiliated websites? What costs, if any, would the applicant incur by posting on such a website? In particular, how expensive would postings be for broadcasters on such sites compared to print newspapers required under the current rule? To the extent that commenters disagree with the proposal and maintain that newspaper publication is more effective than online notice, they should detail their claim with specificity and provide data regarding the costs and benefits of continuing such an approach. Whether they agree or disagree with the proposal, commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

8. If an applicant does not maintain a station or other applicant-affiliated website, the Commission proposes that online notice should be posted on a locally targeted, publicly accessible website. The Commission further proposes to define that as an internet website (a) that members of the public can access without payment, registration, or any other requirement that the user provide information or respond to a survey or questionnaire in exchange for being able to access the online notice, and (b) that is locally targeted to the area served and/or to be served by the applicant station (*e.g.,* local government website, local community bulletin board website, local

newspaper website, state broadcasters' association website). The Commission seeks comment on this proposal, as well as on other alternative non-applicant affiliated websites that commenters believe would provide adequate and accessible notice.

9. Online notice texts. The Commission proposes that the content of the online notice be shorter than that required to be in newspaper publications under the current rule and that it contain a direct link to the application for which notice is being given. We believe that requiring less information is justified because a detailed summary or list of parties to the application is unnecessary when the actual application is a click away for the user. Thus, we propose the following text for the required online notice for authorized stations (with a granted construction permit or license):

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

For proposed stations that have not been authorized, we propose the following text:

On [DATE], [APPLICANT NAME], [APPLICANT FOR] [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

The Commission seeks comment on this proposed text, and any suggested amendments along with reasons for such proposed changes. For example, in addition to the link to the application, should the notice include a link to the public notice publishing the pleading cycle for the application, or a statement of the purpose of the application together with pertinent details such as those specified in our existing rules, to facilitate viewer/listener comments or objections? Should the controlling shareholder of a licensee also be required in the notice? Should the online notice include specific language regarding whether the applicant is seeking a waiver of Commission rules and the nature of the waiver sought, *e.g.,* a media ownership waiver?

10. Duration of posting for online notice. The Commission proposes that the online notice, if posted on an applicant-affiliated site or other third-party site for which the applicant does not have to compensate the website owner for publication, be posted continuously (that is, available for viewing 24 hours a day, seven days a week) for a minimum of 30 days, starting no earlier than the release date of the Commission's public notice of acceptance of the application for filing, and no later than five days following release of that public notice. The Commission seeks comment on the length of continuous posting, in particular, whether the proposed switch from newspaper publication to online posting on an applicant-controlled or affiliated website should increase or decrease the frequency or duration of such notice, especially given that in most cases online notice would be posted 24/7 as opposed to being published in a newspaper on discrete days over a certain time period. Where an applicant must post its online notice on a website that requires the applicant to pay for posting, it is further proposed that such notice be posted for a period of not less than 24 consecutive hours, once a week for four consecutive weeks, starting no earlier than the release date of the Commission's public notice of acceptance of the application for filing, and no later than five days following release of that public notice. A four-week schedule of paid postings is consistent with both the current schedule of newspaper publication and the proposed schedule of on-air announcements, below. What would be the costs associated with a continuous 30-day posting on a website requiring payment, such as a local newspaper? Would such expense outweigh the benefits of extended notice? The Commission seeks comment on this proposal, and in particular whether commenters believe that a substantial number of applicants would need to avail themselves of the pay-to-post option. Commenters may also wish to address whether applicants needing to pay for online notice posting should be required to post more or less frequently, or for a greater or lesser number of consecutive weeks, and to what extent this option affects the costs and benefits of the proposal.

11. Noncommercial online announcements. Under the current rule, noncommercial educational (NCE) stations may fulfill their local notice requirements solely through on-air announcements, where possible. 47 CFR 73.3580(e), among other things, exempts NCE stations from the rule's newspaper publication requirements, unless they are not broadcasting during the part of the year when on-air announcements are required. The Commission has, in the past, questioned whether NCE applicants should be exempt from the newspaper publication requirement, at least in the assignment and transfer application context. Imposing greater burdens on NCE applicants than under the current rules may not comport with the goal of modernizing and streamlining local public notice obligations. At the same time, eliminating the newspaper publication requirement in favor of online notices would substantially reduce burdens on broadcast applicants. The Commission therefore seeks comment as to whether, consistent with the current rule, it should continue to exempt NCE stations generally from the proposed obligation to post online notice of applications. Additionally, in order to clarify the public notice obligations of entities applying for initial construction permits for new NCE stations, it is proposed that applicants for initial construction permits for new NCE broadcast stations comply with the online notice requirements only, as they are unable to broadcast on-air announcements. The Commission also proposes to eliminate the notification exemption in current 47 CFR 73.3580(e) for ''the only operating station in its broadcast service which is located in the community involved,'' as there are more media choices now than when this exemption was adopted, and the fact that a station is the sole AM, FM, or TV station licensed at a community may not guarantee listenership or viewership as may once have been the case. The Commission seeks comment on these proposals.

12. Silent stations. The Commission also proposes that any station required to make on-air announcements that is not broadcasting or that is unable to broadcast during all or a portion of the period during which the on-air announcements are required to be broadcast, such as a silent station, must comply with the online notice requirements during the time period in which it is not broadcasting or is unable to broadcast. To the extent that a station must provide both online notice and on-air announcements, the applicant would be expected to provide online notice for the entire 30-day period notwithstanding whether it was currently broadcasting. However, if the station returns to the air during the period that on-air announcements are required, the station must resume on-air

announcements. Comment is requested on this proposal.

13. Authorizations pursuant to section 325(c) of the Communications Act. The Commission proposes to require applicants for authorization under 47 U.S.C. 325(c)—applicants that propose to locate, use, or maintain a studio supplying programming to a foreign broadcast station whose signals are consistently received in the United States—to provide online notice only, rather than newspaper publication, with the online notice posted on a website locally targeted to the principal area to be served in the United States by the foreign broadcast station. What types of websites would meet this requirement? Would this comport with the statutory requirement to provide ''notice'' in the principal area the broadcaster serves or would serve? Current § 73.3580 requires applicants for authorization under section 325(c) to give public notice via newspaper publication, unless the programs to be transmitted are special events not of a continuing nature, in which case local public notice is not required. The following text for such applicants' online notice is proposed:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU MYIBFS DATABASE].

The Commission further proposes to retain the exemption from local public notice for stations applying for section 325(c) authorization for special event programming only. The Commission seeks comment on these proposals.

14. *Streamlining content of on-air announcements.* The Commission proposes to continue requiring on-air announcements for those applicants currently required to make such announcements, but to standardize and simplify the requirements. It further proposes to make the schedule of on-air announcements, basic content of such announcements, and timing of broadcast uniform for all applicants, broadcast services, and application types, rather than the current system that has different broadcast schedules for different application types. Specifically, the Commission proposes that all on-air announcements commence with acceptance of an application for filing, which would eliminate pre-filing announcements currently broadcast by license renewal applicants. Also, the on-air announcements would direct viewers and listeners to either the applicant's OPIF or, if it does not have an OPIF, toward the application itself in the LMS database.

15. Number of on-air announcements. The Commission proposes to require on-air announcements for all applicants, broadcast services, and application types mandated to make on-air announcements to be aired a total of four times, once per week, for four consecutive weeks, commencing no earlier than the release date of the Commission public notice announcing that the application has been accepted for filing, and not later than five days after release of the Commission public notice. Comment is sought on this proposal. Do commenters believe that the revised rule should require more or fewer on-air announcements than proposed? Should the on-air announcements commence with the applicant's submission of the application, rather than release of the Commission public notice of acceptance for filing? In this regard, the date of the Commission public notice triggers the time period in which petitions to deny may be filed, and for certain application types (*e.g.,* applications for initial construction permits) there can be a substantial delay between application submission and its acceptance for filing, as Commission staff performs core technical review. With regard to license renewal applications specifically, the proposal for uniform on-air announcement schedules would eliminate the ''pre-filing'' announcements currently broadcast by television and radio stations filing such applications. Unlike when the pre-filing announcements adopted, public notices and applications themselves are available instantly online, and petitions to deny are prepared and filed electronically. Thus, the long lead times of the days when pleadings were typed and mailed or messengered are no longer necessary. Moreover, pre-filing announcements would not be able to direct viewers and listeners to an application that they could review. The Commission therefore tentatively concludes that pre-filing announcements are no longer necessary and seeks comment on this conclusion.

16. Timing of on-air announcements. In the interest of further simplifying the public notice process, the Commission proposes that on-air announcements may be aired at any time from 7:00 a.m. to 11:00 p.m. local time at the community of license, from Monday through Friday, and seeks comment on this proposal. The current rule's differing times of airing based on applicant and application type are overly complex, given trends in radio listenership and especially television viewership, such as time-shifting and streaming. Do commenters believe that there should be separate time windows based on differing usage patterns between radio and television, for example, between 7:00 a.m. and 7:00 p.m. for radio, but between 6:00 p.m. and 11:00 p.m. for television? Would other time periods better maximize the number of viewers/listeners exposed to on-air announcements, while reducing the complexity of the current rule? Should the rule specify, for example, that a certain number of announcements be made during local television news, or during radio morning or evening drive time? Commenters proposing different time windows for radio and television should support their proposals with specific listenership/viewer data.

17. On-air announcement scripts. The Commission tentatively concludes that the content of notices should be updated and streamlined to direct listeners and viewers to online resources, where the details of the filed applications may easily be found. The current rule contains scripts that broadcasters must follow for on-air announcements. The Commission proposes to update these scripts to the following for both radio and television on-air announcements:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit *publicfiles.fcc.gov* and search in [STATION CALL SIGN'S] public file.

For stations without an OPIF, the following script is proposed:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit *www.fcc.gov/searchlms,* and search in the list of [STATION CALL SIGN'S] filed applications.

The Commission seeks comment on these scripts, as well as to any additional information that commenters believe should be required. For example, should the on-air announcement include specific language regarding whether the applicant is seeking a waiver of

Commission rules and the nature of the waiver sought, *e.g.* a media ownership waiver?

18. The Commission further proposes to require a television station to use visuals of the full text of the on-air announcement along with the spoken text of the on-air announcement. Because of the reduced length of the on-air announcement, it is believed to be in the public interest and minimally burdensome to require that the entire text be displayed visually. Would requiring additional text ''crawls'' over television programming containing the text of the announcement effectively convey notice to viewers, or would text crawls present unanticipated challenges in this context? Could text ''crawls'' be used to achieve additional repetition of the notice without burdening broadcasters? Are they necessary? It is also proposed to retain the rule recommending that foreign language stations broadcast on-air announcements in the primary language used for broadcast. Comment is sought on these scripts and proposals. For example, should the deadline for filing comments and petitions to deny be included in the on-air announcement? Do commenters believe it is necessary or desirable to include language in on-air announcements advising viewers and listeners of the applicant or licensee's duty to operate a broadcast station in the public interest? Such language is currently required only in the text for on-air announcements of renewal applications. *See* 47 CFR 73.3580(d)(4)(ii). Should the announcement text highlight the licensee's public interest obligation, consistent with the existing text of on-air announcements of renewal applications? If so, should such language apply only to renewal applications or to on-air announcements of all application filings? The Commission also seeks comment as to whether uniform announcement language across all application types, as opposed to language applying only to specific applications such as those for renewals, would aid in overall compliance with the public notice requirements. Commenters are invited to discuss whether there may be better ways of verbally describing how to access applications from OPIF or LMS, without being overly or confusingly detailed.

19. *International Broadcast Station applications.* The Commission's rules state that applications for international broadcast station facilities, also known as HF or shortwave stations, are subject to the local notice provisions. These stations are governed by Subpart F of Part 73 of the rules, 47 CFR 73.701–73.788, and thus would be considered a ''station in the broadcasting . . . services'' under the terms of 47 U.S.C. 311(a)(1). The Commission proposes to streamline the local public notice provisions and seek comment on whether it would serve the public interest to eliminate any on-air notice obligations for these broadcasters. Specifically, with respect to the requirement for local public notice through newspaper publication, the current rules state that this local public notice must be published in a community in which a station is located or proposed to be located. Consistent with the proposals above, the Commission proposes to allow applicants for international broadcast stations to publish the notice on a website that targets the local community in which the international broadcast station is proposed to be located (*e.g.,* local government internet website, local community bulletin board internet website). It is noted that the current rules provide that applications for renewal of an international broadcast station license, and for modification, assignment, or transfer of such licenses, are exempt from the newspaper publication requirements. 47 CFR 73.3580(c), (d)(3). The proposal to substitute online public notice for newspaper publication, if adopted, would eliminate any need to continue this exemption. The Commission seeks comment on these proposals.

20. With respect to on-air notice requirements, comment is sought on whether it would serve the public interest to replace any on-air announcement obligations for international broadcast stations with online notice requirements. Under the current rules, although international broadcast stations are located in the United States, they ''are intended to be received directly by the general public in foreign countries.'' 47 CFR 73.701(a). Thus, unlike other broadcast stations with an on-air announcement obligation, on-air announcements of an international broadcast station primarily give notice to people in multiple foreign countries. Accordingly, the Commission seeks comment on whether to replace on-air announcement obligations for these international broadcast stations with notices on applicant-affiliated websites. An applicant-affiliated website would be accessible by all communities in which the station is either located or received. Any commenters favoring the complete elimination of on-air notices, without replacing them with any other form of notice, should discuss how such elimination would be consistent with 47 U.S.C. 311.

21. *Other provisions.* The Commission proposes to retain the categories of applicants, broadcast services, and application types for which local public notice is not required, as currently listed in 47 CFR 73.3580(a)(1)–(7). Such stations are exempt from the provisions of 47 U.S.C. 309(b), and thus from the provisions of 47 U.S.C. 311(a).

22. The Commission proposes to retain the requirement that applicants certify in any application for which public notice is required that it will comply with the applicable requirements of the local public notice rule, and to retain the requirement that applicants for license renewal, which are obliged to provide public notice only through on-air announcements, add to OPIF the list of dates and times the required on-air announcements were broadcast. (It is recommended that applicants for a new construction permit and permittees and licensees of low-power TV (LPTV), TV translator, TV booster, low-power FM (LPFM), FM translator and FM booster stations, which do not have Commission-hosted OPIFs, retain a record of the dates and times of public notice to demonstrate compliance with 47 CFR 73.3580.) However, based on the proposals in the *FNPRM,* the Commission proposes to eliminate the requirement that the script of the on-air announcements be added to the OPIF, as broadcasters would be expected to follow the mandatory language proposed above. The Commission seeks comment on this proposal. What costs are associated with posting this information? Commenters that urge retention of the requirement that renewal applicants list the dates and times of on-air announcements in their OPIF should specifically describe what benefits justify retention.

23. Lastly, the Commission proposes to continue to apply the local public notice rules to LPFM stations. Although current 47 CFR 73.3580 does not specifically reference LPFM stations' local public notice obligations, other NCE FM and TV stations have such obligations, and there is nothing in 47 U.S.C. 311 that could be read as exempting LPFM stations from its requirements. To eliminate any potential for confusion, it is proposed to make the local public notice requirements of LPFM stations explicit in 47 CFR 73.3580. Because all LPFM stations are licensed as NCE stations (47 CFR 73.853) and locally originate programming, the Commission proposes in the revised rule to apply the public notice requirements that are applied to

other NCE stations; specifically, comment is sought as to whether LPFM stations should be required to give public notice through on-air announcements only, except in the case of applications for new LPFM construction permits and during time periods when the LPFM station may be off the air. Also, because the Commission does not host OPIFs for LPFM stations, their on-air announcements should direct listeners to the application in LMS. The Commission seeks comment on this proposal.

24. *Other rules.* The Commission proposes to update rules related to 47 CFR 73.3580. Specifically, in the *NPRM,* the Commission noted that two other rules also provide for public notice by on-air announcements and/or newspaper publication. 47 CFR 73.3594 requires that when an application that is subject to § 73.3580 is designated for hearing, the applicant must give separate public notice of the hearing designation. With the advent of competitive bidding and point system procedures for awarding initial construction permits, as well as renewal expectations for existing broadcast licensees, hearings are required far less frequently than used to be the case. The Commission thus proposes to amend 47 CFR 73.3594 by streamlining on-air announcements and requiring online notice with links to the hearing designation order or other Commission order (*e.g.,* order to show cause) designating issues for evidentiary hearing. The Commission tentatively concludes that applicants so designated should provide notice by on-air announcements, if the station is on air, and by online notice in all cases. Proposed on-air announcements would follow the same rules regarding commencement, timing, and frequency as proposed for § 73.3580: They would be broadcast once a week for four consecutive weeks, between the hours of 7:00 a.m. and 11:00 p.m. Monday through Friday, commencing no earlier than the release date of the hearing designation order or other order setting forth issues for hearing, and no later than the fifth day following release of such order. The on-air announcement would consist of the following script:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the ''Hearing Designation Order'' notice.

The Commission seeks comment on this proposal. Commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

25. The Commission further proposes that an applicant whose application is designated for hearing should also provide online notice generally following the proposal for § 73.3580: notice would be posted continuously (24/7) for not less than 30 consecutive days, commencing no earlier than the release date of the hearing designation order or other order setting forth issues for hearing, and no later than the fifth day following release of such order. The online notice would consist of the following text:

Hearing Designation Order

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC's ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC's INTERNET WEBSITE].

The Commission seeks comment on this proposal, and on the costs and benefits of the proposal to broadcasters and the public. With regard to both the online notice and on-air announcement proposals, commenters are invited to address whether notice should be for a shorter or longer period of time (*e.g.,* until the hearing has concluded), whether there should be more frequent on-air announcements, or whether the Commission should allow or require online notice to be posted on publicly accessible third-party websites. Additionally, do commenters believe that, given the rarity of hearings on broadcast licenses and the significant questions often raised in the context of a hearing designation order, any on-air announcements and/or online notices should include a brief description of the issues specified for hearing? If not, why not? It is further proposed to retain the provisions of current paragraphs (g) and (h) of 47 CFR 73.3594, which address, respectively, the applicant's obligation to file a certification that public notice was given as required, and the presiding officer's discretion to modify the manner in which public notice is given upon a showing of special circumstances. The Commission seeks comment on the retention of these provisions.

26. Finally, current 47 CFR 73.3525(b) requires local public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity. This provision pertains to conflicting applications for initial construction permits that involve a determination of fair, efficient, and equitable distribution of service under 47 U.S.C. 307(b). As with 47 CFR 73.3594, these requirements were adopted at a time when procedures for awarding new construction permits were very different than they are today. Under current window filing procedures for broadcast auctions and point system evaluations of NCE station applications, the occasions for such inter-applicant agreements rarely if ever arise. The Commission therefore proposes to delete the publication requirement from § 73.3525 and seek comment on this proposal. Commenters arguing for retention of this requirement should address both the consumer benefit of publication and the annual number of applicants they believe would be affected by retention of this portion of the rule.

Comments and Reply Comments.

27. *Filing Requirements.—Comments and Replies.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this notice. 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 20743.

• U.S. postal first class service, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

28. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII.

Procedural Matters

Ex Parte Rules

29. In the *NPRM* in this proceeding, the Commission stated that the proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* This proceeding shall continue to be so treated. Persons making *ex parte* presentations must file a copy of any written presentation or 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 the 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, .ppl, searchable .ppl). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

30. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

31. 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 proposed in the *Further Notice of Proposed Rulemaking* (*FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided on the first page of the *FNPRM.* The Commission will send a copy of this entire *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the *FNPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need For, and Objectives of, the Proposed Rules

32. The Commission initiates this rulemaking proceeding to obtain comments concerning proposals designed (a) to clarify and simplify the rules and procedures to be followed by certain applicants for broadcast authorizations in order to give local public notice of those applications; and (b) to give local public notice of the designation of certain applications for evidentiary hearing. The Commission proposes to replace the current rules (see generally 47 CFR 73.3580, 73.3594), which are difficult to follow and which contain varying local public notice requirements based on the type of application and the type of station to which the application pertains, with a more uniform, and thus more convenient, set of procedures for providing notice through on-air announcements and by online posting of links to applications, rather than publication in local newspapers. Additionally, by eliminating the need to publish some public notices in local newspapers and allowing a broadcaster instead to post notices on its website or an affiliated website, the proposal would eliminate an expense currently borne by broadcasters. The Commission also proposes to eliminate the current rule requiring public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity. 47 CFR 73.3525(b).

B. Legal Basis

33. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303(r), 309, 311, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 311, and 336.

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

34. 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. 5 U.S.C. 603(b)(3). The RFA generally defines the

term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

35. *Television Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. *Id.* These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

36. The Commission has estimated the number of licensed commercial television stations to be 1,371. *See Broadcast Station Totals as of June 30, 2019,* FCC News Release (rel. July 9, 2019) (*Broadcast Station Totals*). Of this total, 1,263 stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 5, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 386. *See Broadcast Station Totals.* The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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

38. There are also 387 Class A stations. *See Broadcast Station Totals.* Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations, thus restricting their ability to generate similar levels of revenue, it is presumed that these licensees qualify as small entities under the SBA definition. In addition, there are 1,897 LPTV stations and 3,648 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, it is presumed that all of these entities qualify as small entities under the above SBA small business size standard.

39. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. *Id.* Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

40. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,406 and the number of commercial FM radio stations to be 6,726 for a total number of 11,132, along with 8,126 FM translator and booster stations. *See Broadcast Station Totals.* As of September 2019, 4,294 AM stations and 6,739 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,179. *See Broadcast Station Totals.* NCE stations are non-profit, and therefore considered to be small entities. 5 U.S.C. 601(4), (6). Therefore, it is estimated that the majority of radio broadcast stations are small entities.

41. *Low Power FM Stations.* The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,178. *See Broadcast Station Totals.* In addition, as of June 30, 2019, there were a total of 8,126 FM translator and FM booster stations. *Id.* Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, it is presumed that these licensees qualify as small entities under the SBA definition.

42. Again, however, in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, the estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, the estimate of small radio stations potentially affected by the rule revisions discussed in the *FNPRM* includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

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

43. In this section, the reporting, recordkeeping, and other compliance requirements proposed in the *FNPRM* are identified and any disproportionate effects on small entities are considered.

44. *Reporting Requirements.* The *FNPRM* does not propose to adopt reporting requirements.

45. *Recordkeeping Requirements.* The *FNPRM* proposes to adopt recordkeeping requirements insofar as it amends 47 CFR 73.3526(e) and 73.3527(e) to reflect the nature of the proposed new on-air announcement requirements for which licensees must certify compliance and retain the certification in the online public inspection file (OPIF). The proposed new requirements are no more extensive than the current certification and retention requirements, and in fact are less onerous in that there are fewer announcements requiring certification, and the OPIF is online rather than a physical file. Thus, the impact on small entities will be no greater than it is currently and in most cases the new rules will be less burdensome.

46. *Other Compliance Requirements.* The *FNPRM* proposes to adopt new rules amending, streamlining, and standardizing the local public notice requirements for television and radio stations, including small entities. These proposed new rules prescribe the content, number, frequency, and times of day that on-air announcements must be made, and the proposed rules require fewer and shorter announcements than the current rules, with greater flexibility as to time of broadcast. The proposed new rules would also replace newspaper publication of certain public notice with online notice, either on an applicant-affiliated website or another publicly accessible, locally targeted website. The new online notice rule also provides for shorter notices than the current newspaper publication requirement, and would result in substantial cost savings to applicants in most cases. Thus, the proposed rules would significantly reduce burdens on broadcast applicants, most of whom are small entities.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

47. 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 small entities. 5 U.S.C. 603(c)(1)–(c)(4).

48. The *FNPRM* proposes to amend 47 CFR 73.3580 to reorganize, simplify, and clarify broadcasters' public notice obligations when filing certain applications, such as license renewal applications and applications to assign or transfer broadcast authorizations. In addition to streamlining and making uniform the requirement of some stations to provide public notice through on-air announcements, the *FNPRM* proposes to require public notice of the filing of certain broadcast applications through online postings on the internet, instead of publishing such notice in a newspaper. These proposals, if adopted, would reduce burdens on all broadcast applicants, including small entities, when meeting their obligation to notify the public of pending or prospective applications, while improving the public's access to information enabling it to participate in the licensing process. Some commenters assert that permitting public notice through the internet would be less costly and administratively burdensome than the existing requirement of newspaper publication, and thus the proposal would provide a less burdensome compliance option for all applicants, including small entities. With regard to just one category of applicants, those applying for consent to assign a broadcast authorization or to transfer control of the entity holding a broadcast authorization, the Commission has estimated that there are 4,020 annual applicants, each of which must publish public notice in a local newspaper four times at a cost of $113.25 per publication, for a total annual burden of $1,820, 256, for applicants in this category alone. Thus, it can be seen that replacing newspaper publication with online notices can result in considerable cost savings to broadcasters and broadcast applicants.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

49. None.

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

Ordering Clauses

51. Accordingly, *It is ordered* that, pursuant to sections 1, 4(i), 4(j), 303(r), 309, 311, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 311, and 336, this *Further Notice of Proposed Rule Making is adopted.*

52. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.3525 [Amended]

■ 2. In § 73.3525, remove paragraph (b) and redesignate paragraphs (c) through (l) as paragraphs (b) through (k).

■ 3. In § 73.3526, revise paragraph (e)(13) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(13) *Local public notice announcements.* Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this requirement. The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period

specified in § 73.3580(e)(2) (for as long as the application to which it refers).

* * * * *

■ 4. In § 73.3527, revise paragraph (e)(10) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(10) *Local public notice announcements.* Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this requirement. The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in § 73.3580(e)(2) (for as long as the application to which it refers).

* * * * *

■ 5. Revise § 73.3580 to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

(a) *Definitions.* The following definitions shall apply to this section:

(1) *Acceptance public notice:* A Commission public notice announcing that an application has been accepted for filing.

(2) *Applicant-affiliated website:* Any of the following internet websites, to the extent they are maintained, in order of priority:

(i) The applicant station's internet website;

(ii) The applicant's internet website; or

(iii) The applicant's parent entity's internet website. An applicant maintaining or having access to more than one of the above-listed internet websites shall post online notice on the website with the highest priority.

(3) *Locally originating programming:* A low power television (LPTV) or television translator station broadcasting programming as defined in § 74.701(h).

(4) *Major amendment:* A major amendment to an application is that defined in §§ 73.3571(b), 73.3572(c), 73.3573(b), 73.3578, and 74.787(b).

(5) *Publicly accessible website:* An internet website (a) that is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website, and (b) that is locally targeted to the area served and/or to be served by the applicant station (*e.g.,* local government internet website, local community bulletin board internet website, state broadcasters' association internet website). For international broadcast stations application filed pursuant to § 73.3574, the internet website must locally target the community in which the International broadcast station is proposed to be located (*e.g.,* local government internet website, local community bulletin board internet website).

(b) *Types of Public Notice.* Public notice is required of applicants for certain broadcast authorizations in the manner set forth below:

(1) *On-Air Announcement:* An applicant shall broadcast on-air announcements of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, over its station as follows:

(i) *Content:* The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit *publicfiles.fcc.gov,* and search in [STATION CALL SIGN'S] public file.

An applicant station without an online public inspection file shall instead broadcast the following on-air announcement:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit *www.fcc.gov/searchlms,* and search in the list of [STATION CALL SIGN'S] filed applications.

Television broadcast stations, in presenting on-air announcements, must use visuals with the full text of the on-air announcement when this information is being orally presented by the announcer.

(ii) *Frequency of broadcast:* The applicant shall broadcast the on-air announcements once per week (Monday through Friday) for four consecutive weeks, for a total of four (4) broadcasts.

(iii) *Commencement of broadcast:* The applicant shall air the first broadcast of the on-air announcement no earlier than the date of release of the acceptance public notice for the application, and no later than the fifth day following release of the acceptance public notice for the application.

(iv) *Time of broadcast:* The applicant shall broadcast all on-air announcements between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) *Language of broadcast:* A station broadcasting primarily in a foreign language should broadcast the announcements in that language.

(vi) *Silent stations or stations not broadcasting:* Any station required to broadcast on-air announcements that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, including silent stations and noncommercial educational broadcast stations that are not scheduled to broadcast during the portion of the year during which on-air announcements are required to be broadcast, must comply with the provisions of paragraph (b)(2) of this section during the time period in which it is unable to broadcast required on-air announcements, and must broadcast required on-air announcements during the time period it is able to do so.

(2) *Online Notice:* An applicant shall conspicuously post on an internet website notice of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, as follows:

(i) *Content:* The online notice shall be in the following form:

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

An applicant for a proposed but not authorized station shall post the following online notice:

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering

Programs to a Foreign Station) shall post the following online notice:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYIBFS DATABASE].

(ii) *Site:* The applicant shall post online notice on an applicant-affiliated website, as defined in paragraph (a)(2) of this section. If the applicant does not maintain or have access to an applicant-affiliated website, the applicant may post the online notice on a publicly accessible website, as defined in paragraph (a)(5) of this section. An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post online notice on a publicly accessible website that is locally targeted to the principal area to be served in the United States by the foreign broadcast station.

(iii) *Duration of posting:* If the online notice is posted on an applicant-affiliated website or on a publicly accessible website for which the applicant is not required to compensate the website owner in exchange for posting the online notice, then the applicant must post the online notice for a minimum of 30 consecutive days. If the applicant does not maintain an applicant-affiliated website, and the applicant is required to compensate a website owner in exchange for posting on a publicly accessible website, the applicant must post the online notice for a period of not less than 24 consecutive hours, once per week (Monday through Friday), for four consecutive weeks.

(iv) *Commencement of posting:* The applicant must post the online notice no earlier than the date of release of the acceptance public notice for the application, and not later than five days following release of the acceptance public notice for the application.

(c) *Applications Requiring Local Public Notice.* The following applications filed by licensees or permittees of the following types of stations must provide public notice in the manner set forth below:

(1) *Applications for a new construction permit authorization or major amendments thereto:*

(i) For a commercial or noncommercial educational full power television; full-service AM or FM radio station; Class A television station; low power television (LPTV) or television translator station; low-power FM (LPFM) station; or commercial or noncommercial FM translator or FM booster station, the applicant shall give online notice only.

(ii) For an international broadcast station, the applicant shall give online notice in a publicly accessible website, locally targeted to the community in which the station is to be located.

(2) *Applications for a major modification to a construction permit or license, or major amendments thereto:*

(i) For a noncommercial educational full power television; noncommercial full-service AM or FM radio station; or for an LPFM station, the applicant shall broadcast on-air announcements only.

(ii) For a commercial full power television; commercial full-service AM or FM radio station; or a Class A television station, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV or television translator station; or an FM translator or FM booster station, the applicant shall give online notice only.

(iv) For an international broadcast station, the applicant shall give online notice only.

(3) *Applications for renewal of license:*

(i) For a full power television; full-service AM or FM radio station; Class A television station; LPTV station locally originating programming; or LPFM station, the applicant shall broadcast on-air announcements only.

(ii) For an LPTV station that does not locally originate programming; or for a TV or FM translator station, the applicant shall give online notice only.

(iii) For an international broadcast station, the applicant shall give online notice only.

(4) *Applications for assignment or transfer of control of a construction permit or license, or major amendments thereto:*

(i) For a noncommercial educational full power television; noncommercial full-service AM or FM radio station; or an LPFM station, the applicant shall broadcast on-air announcements only.

(ii) For a commercial full power television; commercial full-service AM or FM radio station; Class A television station; or an LPTV station that locally originates programming, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV station that does not locally originate programming or a TV translator station, the applicant shall give online notice only.

(iv) For an international broadcast station, the applicant shall give online notice only.

(5) *Applications for a minor modification to change a station's community of license, or major amendments thereto:*

(i) For a noncommercial educational full-service AM or FM radio station, the applicant shall broadcast on-air announcements only.

(ii) For a commercial full-service AM or FM radio station, the applicant shall both broadcast on-air announcements and give online notice. In addition to the online notice set forth in paragraph (b)(2) of this section locally targeted to the applicant station's current community of license, the applicant shall also give online notice on a publicly accessible website locally targeted to the community that the applicant proposes to designate as its new community of license, for the same time periods and in the same manner as set forth in paragraph (b)(2) of this section.

(6) *Applications for a permit pursuant to section 325(c) of the Communications Act (Studio Delivering Programming to a Foreign Station):* The applicant shall give online notice only.

(d) *Applications For Which Local Public Notice Is Not Required.* The following types of applications are not subject to the local public notice provisions of this section:

(1) A minor change in the facilities of an authorized station, as indicated in §§ 73.3571, 73.3572, 73.3573, 73.3574, and 74.787(b), except a minor change to designate a different community of license for an AM or FM radio broadcast station, pursuant to the provisions of §§ 73.3571(j) and 73.3573(g).

(2) Consent to an involuntary assignment or transfer or to a voluntary assignment or transfer which does not result in a change of control and which may be applied for on FCC Form 316, or any successor form released in the future, pursuant to the provisions of § 73.3540(b).

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license.

(4) Extension of time to complete construction of authorized facilities.

(5) An authorization of facilities for remote pickup or studio links for use in the operation of a broadcast station.

(6) Authorization pursuant to section 325(c) of the Communications Act

(Studio Delivering Programs to a Foreign Station) where the programs to be transmitted are special events not of a continuing nature.

(7) An authorization under any of the proviso clauses of section 308(a) of the Communications Act concerning applications for and conditions in licenses.

(e) *Certification of Local Public Notice.*

(1) The applicant must certify in the appropriate application that it will comply with the public notice requirements set forth in paragraph (c) of this section.

(2) An applicant for renewal of a license that is required to maintain an online public inspection file shall, within seven (7) days of the last day of broadcast of the required on-air announcements, place in its online public inspection file a statement certifying compliance with § 73.3580, along with the dates and times that the on-air announcements were broadcast. An applicant for renewal of a license that is required to maintain an online public inspection file, and that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, as set forth in paragraph (b)(1)(v) of this section, shall, within seven (7) days of the last on-air announcement or last day of posting online notice, whichever occurs last, place in its online public inspection file a statement certifying compliance with § 73.3580, along with the dates and times that any on-air announcements were broadcast, along with the dates and times that online notice was posted and the Universal Resource Locator (URL) of the internet website on which online notice was posted. This certification need not be filed with the Commission but shall be retained in the online public inspection file for as long as the application to which it refers.

(f) *Time for Acting on Applications.* Applications (as originally filed or amended) will be acted upon by the FCC no sooner than 30 days following release of the acceptance public notice, except as otherwise permitted in § 73.3542, ''Application for emergency authorization,'' or in § 73.1635, ''Special temporary authorizations (STA).''

■ 6. Revise § 73.3594 to read as follows:

§ 73.3594 Local public notice of designation for hearing.

(a) When an application subject to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows:

(1) *On-Air Announcement:* The applicant (except an applicant filing an application for an International broadcast, low power TV, TV translator, FM translator, and FM booster station) shall broadcast an on-air announcement of the designation of an application for hearing over its radio or television station as follows:

(i) *Content:* The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the ''Hearing Designation Order'' notice.

Television broadcast stations (commercial and noncommercial educational), in presenting on-air announcements, must use visuals [with the full text of the on-air announcement] when this information is being orally presented by the announcer.

(ii) *Frequency of broadcast:* The on-air announcements shall be broadcast a total of four (4) times, once per week for four consecutive weeks.

(iii) *Commencement of broadcast:* The first broadcast of the on-air announcement shall occur no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth day following release of said order.

(iv) *Time of broadcast:* The on-air announcements shall be broadcast between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) *Language of broadcast:* A station broadcasting primarily in a foreign language shall broadcast the announcements in that language.

(2) *Online Notice:* The applicant shall also post an online notice of the designation of an application for hearing conspicuously on an internet website as follows:

(i) *Content:* The online notice shall be in the following form:

Hearing Designation Order

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC's ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC's INTERNET WEBSITE].

(ii) *Site:* The applicant shall post online notice on one of the following internet websites, to the extent such websites are maintained, in order of priority:

(A) the applicant station's internet website;

(B) the applicant's internet website; or

(C) the applicant's parent entity's internet website.

If the applicant does not maintain an internet website for the station or itself, or if the applicant's parent entity does not maintain an internet website, the applicant shall post online notice on an internet website (a) that is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website, and (b) that is locally targeted to the area served and/or to be served by the applicant station (*e.g.,* local government internet website, local community bulletin board internet website, state broadcasters' association internet website).

(iii) *Commencement of posting:* The online notice shall be posted no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth day following release of said order.

(iv) *Length of posting:* The online notice must be posted for a minimum of 30 consecutive days.

(b) Within seven (7) days of the last day of broadcast of the notice required by paragraph (a)(1) of this section, the applicant shall file a an original statement and one copy with the Secretary of the Commission setting forth the dates and times on which the on-air announcements were made, the date the online notice was first posted, and the Universal Resource Locator (URL) address of the internet website on which online notice is posted.

(c) The failure to comply with the provisions of this section is cause for dismissal of an application with prejudice. However, upon a finding that applicant has complied (or proposes to comply) with the provisions of section

311(a)(2) of the Communications Act, and that the public interest, convenience, and necessity will be served thereby, the presiding officer may authorize an applicant, upon a showing of special circumstances, to give notice in a manner other than that prescribed by this section; may accept notice that is given in a manner which does not conform strictly in all respects with the provisions of this section; or may extend the time for giving notice.

[FR Doc. 2019–22052 Filed 10–17–19; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1539 and 1552

[EPA–HQ–OARM–2018–0743; FRL–10000–34–OMS]

Environmental Protection Agency Acquisition Regulation (EPAAR); Open Source Software

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is writing a new EPAAR clause to address open source software requirements at EPA, so that the EPA can share open source software developed under its procurements.

DATES: Comments must be received on or before December 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2018–0743, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, Policy, Training and Oversight Division, Acquisition Policy and Training Branch (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting Classified Business Information.* Do not submit CBI to EPA website *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a *Code of Federal Regulations* (CFR) Part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The EPA is writing a new EPAAR clause to address open source software requirements at EPA, so that the EPA can share custom-developed code as open source code developed under its procurements, in accordance with Office of Management and Budget's (OMB) Memorandum M–16–21, *Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software.* In meeting the requirements of Memorandum M–16–21 the EPA will be providing an enterprise code inventory indicating if the new code (source code or code) was custom-developed for, or by, the agency; or if the code is available for Federal reuse; or if the code is available publicly as open source code; or if the code cannot be made available due to specific exceptions.

III. Proposed Rule

The proposed rule amends EPA Acquisition Regulation (EPAAR) Part 1539, *Acquisition of Information Technology,* by adding Subpart 1539.2, *Open Source Software;* and § 1539.2071, *Contract clause.* EPAAR Subpart 1552.2, *Texts of Provisions and Clauses,* is amended by adding EPAAR § 1552.239–71, *Open Source Software.*

1. EPAAR Subpart 1539.2 adds the new subpart.

2. EPAAR § 1539.2071 adds the prescription for use of § 1552.239–71 in all procurements where open-source software development/custom development of software will be required.

3. EPAAR § 1552.239–71, *Open Source Software,* provides the terms and conditions for open source software code development and use.

IV. Statutory and Executive Orders Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of this proposed rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' 5 U.S.C. 503 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action establishes a new EPAAR clause that will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications as specified in Executive Order 13175.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environment health or safety risks.

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

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28335 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C. 272 note) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment in the general public.

K. Congressional Review Act

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 major 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. Section 804(2) defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. EPA is not required to submit a rule report regarding this action under section 801 as this is not a major rule by definition.

List of Subjects in 48 CFR Parts 1539 and 1552

Environmental protection, Government procurement, Reporting and recordkeeping requirements.

Dated: September 17, 2019.

Kimberly Y. Patrick,

Director, Office of Acquisition Solutions.

For the reasons set forth in the preamble, EPA proposes to amend EPAAR parts 1539 and 1552 as follows:

PART 1539—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. Authority: The authority citations for part 1539 continue to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

■ 2. Part 1539, as proposed to be added at 84 FR 48856 (September 17, 2019), is proposed to be further amended by adding subpart 1539.2, consisting of 1539.2071 to read follows:

Subpart 1539.2—Open Source Software

1539.2071 Contract clause.

(a) Contracting Officers shall use clause 1552.239–71, *Open Source Software,* for all procurements where open-source software development/custom development of software will be required; including, but not limited to, multi-agency contracts, Federal Supply Schedule orders, Governmentwide Acquisition Contracts, interagency agreements, cooperative agreements and student services contracts.

(b) In addition to clause 1552.239–71, Contracting Officers must also select the appropriate version* of Federal Acquisition Regulation (FAR) clause 52.227–14, *Rights in Data—General,* to include in the subject procurement in accordance with FAR 27.409. (**Important note: Alternate IV of clause 52.227–14 is NOT suitable for open-source software procurement use because it gives the contractor blanket permission to assert copyright.*)

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Authority: The authority citations for part 1552 continue to read as follows:

Authority: 5 U.S.C. 301 and 41 U.S.C. 418b.

■ 4. Add Section 1552.239–71 to read as follows:

1552.239–71 Open source software.

As prescribed in 1539.2071 insert the following clause:

Open Source Software (*Date*)

(a) *Definitions.*

''Custom-Developed Code'' means code that is first produced in the performance of a federal contract or is otherwise fully funded by the federal government. It includes code, or segregable portions of code, for which the government could obtain unlimited rights under Federal Acquisition Regulation (FAR) Part 27 and relevant agency FAR Supplements. Custom-developed code also includes code developed by agency employees as part of their official duties. Custom-developed code may include, but is not limited to, code written for software projects, modules, plugins, scripts, middleware and Application Programming Interfaces (API); it does not, however, include code that is truly exploratory or disposable in nature, such as that written by a developer experimenting with a new language or library.

''Open Source Software (OSS)'' means software that can be accessed, used, modified and shared by anyone. OSS is often distributed under licenses that comply with the definition of ''Open Source'' provided by the Open Source Initiative at *https://opensource.org/osd* or equivalent, and/or that meet the definition of ''Free Software'' provided by the Free Software Foundation at: *https://www.gnu.org/philosophy/free-sw.html* or equivalent. ''Software'' means:

(1) Computer programs that comprise a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas and related material that would enable the computer program to be produced, created or compiled. Software does not include computer databases or computer software documentation.

''Source Code'' means computer commands written in a computer programming language that is meant to be read by people. Generally, source code is a higher-level representation of computer commands written by people, but must be assembled, interpreted or compiled before a computer can execute the code as a program.

(b)(1) *Policy.* It is the EPA policy that new custom-developed code be made broadly available for reuse across the federal government, subject to the exceptions provided in (b)(3) of this section. The policy does not apply retroactively so it does not require existing custom-developed code also be made available for Government-wide reuse or as OSS. However, making such code available for government-wide reuse or as OSS, to the extent practicable, is strongly encouraged. The EPA also supports the Office of Management and Budget's (OMB) Federal Source Code Policy provided in OMB Memorandum M–16–21, *Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software,* by:

(i) Providing an enterprise code inventory (*e.g.,* code.json file) that lists new and applicable custom-developed code for, or by, the EPA;

(ii) Indicating whether the code is available for Federal reuse; or

(iii) Indicating if the code is available publicly as OSS.

(2) *Exemption:* Source code developed for National Security Systems (NSS), as defined in 40 U.S.C. 11103, is exempt from the requirements herein.

(3) *Exceptions:* Exceptions may be applied in specific instances to exempt EPA from sharing custom-developed code with other government agencies. Any exceptions used must be approved and documented by the Chief Information Officer (CIO) or his or her designee for the purposes of ensuring effective oversight and management of IT resources. For excepted software, EPA must provide OMB a brief narrative justification for each exception, with redactions as appropriate. Applicable exceptions are as follows:

(i) The sharing of the source code is restricted by law or regulation, including—but not limited to—patent or intellectual property law, the Export Asset Regulations, the International Traffic in Arms Regulation and the federal laws and regulations governing classified information.

(ii) The sharing of the source code would create an identifiable risk to the detriment of national security, confidentiality of government information or individual privacy.

(iii) The sharing of the source code would create an identifiable risk to the stability, security or integrity of EPA's systems or personnel.

(iv) The sharing of the source code would create an identifiable risk to EPA mission, programs or operations.

(v) The CIO believes it is in the national interest to exempt sharing the source code.

(c) The Contractor shall deliver to the Contracting Officer (CO) or Contracting Officer's Representative (COR) the underlying source code, license file, related files, build instructions, software user's guides, automated test suites, and other associated documentation as applicable.

(d) In accordance with OMB Memorandum M–16–21 the Government asserts its unlimited rights—including rights to reproduction, reuse, modification and distribution of the custom source code, associated documentation, and related files—for reuse across the federal government and as open source software for the public. These unlimited rights described above attach to all code furnished in the performance of the contract, unless the parties expressly agree otherwise in the contract.

(e) The Contractor is prohibited from reselling code developed under this contract without express written consent of the EPA Contracting Officer. The Contractor must provide at least 30 days advance notice if it intends to resell code developed under this contract.

(f) Technical guidance for EPA's OSS Policy should conform with the ''EPA's Open Source Code Guidance'' that will be maintained by the Office of Mission Support (OMS) at *https://developer.epa.gov/guide/open-source-code/* or equivalent.

(g) The Contractor shall identify all deliverables and asserted restrictions as follows:

(1) The Contractor shall use open source license either:

(i) Identified in the contract, or

(ii) Developed using one of the following licenses:

(A) Creative Commons Zero (CC0);

(B) MIT license;

(C) GNU General Public License version 3 (GPL v3);

(D) Lesser General Public License 2.1 (LGPL–2.1);

(E) Apache 2.0 license; or

(F) Other open source license subject to Agency approval.

(2) The Contractor shall provide a copy of the proposed commercial license agreement to the Contracting Officer prior to contracting for commercial data/software.

(3) The Contractor shall identify any data that will be delivered with restrictions.

(4) The Contractor shall deliver the data package as specified by the EPA.

(5) The Contractor shall deliver the source code to the EPA-specified version control repository and source code management system.

(h) The Contractor shall comply with software and data rights requirements and provide all licenses for software dependencies as follows:

(1) The Contractor shall ensure all deliverables are appropriately marked with the applicable restrictive legends.

(2) The EPA is deemed to have received unlimited rights when data or software is delivered by the Contractor with restrictive markings omitted.

(3) If the delivery is made with restrictive markings that are not authorized by the contract, then the marking is characterized as ''nonconforming.'' In accordance with Federal Acquisition Regulation (FAR) 46.407, *Nonconforming supplies or services,* the Contractor will be given the chance to correct or replace the nonconforming supplies within the required delivery schedule. If the Contractor is unable to deliver conforming supplies, then the EPA is deemed to have received unlimited rights to the nonconforming supplies.

(i) The Contractor shall include this clause in all subcontracts that include custom-developed code requirements.

(End of clause)

[FR Doc. 2019–22435 Filed 10–17–19; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 664 (Sub-No. 4)]

Methodology for Determining the Railroad Industry's Cost of Capital

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to incorporate an additional model to complement its use of the Morningstar/Ibbotson Multi-Stage Discounted Cash Flow Model (MSDCF) and the Capital Asset Pricing Model (CAPM) in determining the cost-of-equity component of the cost of capital.

DATES: Comments on the proposed rule are due by November 5, 2019. Reply comments are due by December 4, 2019.

ADDRESSES: Comments and replies must be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 664 (Sub-No. 4), 395 E Street SW, Washington, DC 20423–0001. Written comments and replies will be posted to the Board's website at *www.stb.gov*.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Each year, the Board determines the railroad industry's cost of capital and then uses this figure in a variety of regulatory proceedings, including the annual determination of railroad revenue adequacy, rate reasonableness cases, feeder line applications, rail line abandonments, trackage rights cases, and rail merger reviews. The annual cost-of-capital figure is also used as an input in the Uniform Railroad Costing System, the Board's general purpose costing system.[1]

The Board calculates the cost of capital as the weighted average of the cost of debt and the cost of equity. *See Methodology to be Employed in Determining the R.R. Indus.'s Cost of Capital,* EP 664, slip op. at 3 (STB served Jan. 17, 2008). While the cost of debt is observable and readily available, the cost of equity (the expected return that equity investors require) can only be estimated.[2] *Id.* Thus, ''estimating the cost of equity requires relying on appropriate finance models.'' *Pet. of the W. Coal Traffic League to Inst. a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the R.R. Indus.'s Cost of Equity Capital,* EP 664 (Sub-No. 2), slip op. at 2 (STB served Oct. 31, 2016).

In 2009, the Board moved from a cost-of-equity estimate based solely on CAPM to a cost-of-equity estimate based on a simple average of the estimates produced by CAPM and Morningstar/Ibbotson MSDCF. *See Use of a Multi-Stage Discounted Cash Flow Model in Determining the R.R. Indus.'s Cost of Capital,* EP 664 (Sub-No. 1), slip op. at 15 (STB served Jan. 28, 2009). In that decision, the Board cited to the Federal Reserve Board's testimony in *Methodology to be Employed in Determining the Railroad Industry's Cost of Capital,* Docket No. EP 664, which stated that the use of multiple models ''will improve estimation techniques when each model provides new information.'' *Use of a Multi-Stage Discounted Cash Flow Model,* EP 664 (Sub-No. 1), slip op. at 15. Furthermore, the Board stated that ''there is robust economic literature confirming that, in many cases, combining forecasts from different models is more accurate than relying on a single model.''[3]

[1] On October 11, 2019, the Board corrected the decision served on September 30, 2019. In that decision, Appendix B on page 12 incorrectly noted the 2010 cost-of-equity estimate produced by the simple average of CAPM and Morningstar/Ibbotson MSDCF as 12.98%. It has been corrected to 12.99%. Additionally, Appendix B on page 12 incorrectly noted the 2013, 2015, and 2018 cost-of-equity estimates produced by the proposed weighted average of CAPM (50%), Morningstar/Ibbotson MSDCF (25%), and Step MSDCF (25%) as 12.78%, 10.94%, and 13.46%. These values have been corrected to 12.79%, 10.95%, and 13.45%, respectively. The reference to 13.46% on page eight in the narrative portion of this decision has been likewise corrected to 13.45%. The decision remains unchanged in all other respects.

[2] The Board must make ''an adequate and continuing effort to assist those carriers in attaining revenue levels,'' which should, among other objectives, ''permit the raising of needed equity capital.'' 49 U.S.C. 10704(a)(2).

[3] *Use of a Multi-Stage Discounted Cash Flow Model,* EP 664 (Sub-No. 1), slip op. at 15 (citing

Continued

Under CAPM, the cost of equity is equal to RF + β × RP, where RF is the risk-free rate of interest,[4] RP is the market-risk premium, and β (or beta) is the measure of systematic, non-diversifiable risk. Under CAPM, the Board calculates the risk-free rate based on the average yield to maturity for a 20-year U.S. Treasury Bond. The estimate for the market-risk premium is based on returns experienced by the S&P 500 since 1926. Lastly, beta is calculated by using a portfolio of weekly, merger-adjusted railroad stock returns for the prior five years.

Under Morningstar/Ibbotson MSDCF, the cost of equity is the discount rate that equates a firm's market value to the present value of the expected stream of cash flows. Morningstar/Ibbotson MSDCF calculates growth of earnings in three stages. In the first stage (years one through five), the qualifying railroad's[5] annual earnings growth rate is assumed to be the median value of its three- to five-year growth rate estimates, as determined by railroad industry analysts and published by the Institutional Brokers Estimate System.[6] In the second stage (years six through 10), the growth rate is the simple average of all of the qualifying railroads' median three- to five-year growth rate estimates in stage one. In the third stage (years 11 and onwards), the growth rate is the long-run nominal growth rate of the U.S. economy. This long-run nominal growth rate is estimated by using the historical growth in real Gross Domestic Product plus the long-run expected inflation rate.

Proposed Rule

The Board proposes to add an additional model, which the Board will refer to as ''Step MSDCF'' to the cost-of-capital calculation, as described below.[7] Consistent with the Board's present methodology, in which CAPM and MSDCF approaches each comprise 50% of the cost-of-equity estimate, the Board proposes to calculate the cost of capital by using the weighted average of the three models, with CAPM weighted at 50%, Morningstar/Ibbotson MSDCF weighted at 25%, and Step MSDCF weighted at 25%.

As the Board has stated previously, there is no single simple or correct way to estimate the cost of equity for the railroad industry, and many model options are available. *Use of a Multi-Stage Discounted Cash Flow Model,* EP 664 (Sub-No. 1), slip op. at 15; *see also Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 2, 20 (STB served Oct. 31, 2016). The Board has acknowledged that ''by using multiple models that are based on different perspectives and rely on different inputs, the Board benefits because anomalies affecting one model are less likely to affect the other.'' *Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 3 (STB served Apr. 28, 2017). The Board has previously determined that a methodology that uses multiple models is more robust than a methodology that utilizes only one model, not because one model is ''conceptually or pragmatically superior to the other,'' but rather because each has different strengths and weaknesses. *Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 11 (STB served Oct. 31, 2016). Accordingly, the Board finds that its cost-of-capital determinations could be strengthened by the addition of a new model to improve the robustness of its calculations.

Since 2009, the Board has found that the simple average of CAPM and Morningstar/Ibbotson MSDCF has produced a reasonable estimate of the cost of equity used to gauge the financial health of the railroad industry. Most recently, in *Railroad Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 2–3 (STB served Aug. 6, 2019), discussed in more detail below, the Board once again affirmed this established methodology as reasonable. However, in that decision, the Board also noted that, when appropriate, the Board has undertaken an examination of whether changes to its cost-of-capital methodology may be warranted, and stated that it expected to open a proceeding to further explore whether modifications to its cost-of-capital methodology may be appropriate. *Id.* at 3.

In the proceeding to update the railroad industry's cost of capital for 2018, the Board received comments from the Association of American Railroads (AAR) providing the information used to make the annual cost-of-capital determination. *See generally* AAR Comments, Apr. 22, 2019, *R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22). The supporting data submitted with AAR's filing reflected a significant increase in growth rates[8] and the cost of capital. Specifically, the 2018 cost of capital (12.22%) is 2.18 percentage points higher than the 2017 cost of capital (10.04%). According to AAR, lower tax rates and rail operating changes, among other factors, contributed to analysts' higher growth expectations.[9] At present, three of the four qualifying railroads included in the Board's cost-of-capital calculations have implemented some form of operating changes, which are generally referred to as ''precision scheduled railroading.''[10]

Significant operating changes that occur over a relatively short period of time can have a unique effect on the Board's annual cost-of-capital determination, particularly if they are neither one-time events[11] nor expected

David F. Hendry & Michael P. Clements, *Pooling of Forecasts,* VII Econometrics Journal 1 (2004); J.M. Bates & C.W.J. Granger, *The Combination of Forecasts* in *Essays in Econometrics: Collected Papers of Clive W.J. Granger, Vol. I: Spectral Analysis, Seasonality, Nonlinearity, Methodology, & Forecasting* 391–410 (Eric Ghysels, Norman R. Swanson, & Mark W. Watson, eds., 2001); Spyros Makridakis & Robert L. Winkler, *Averages of Forecasts: Some Empirical Results,* XXIX Management Science 987 (1983)).

[4] The risk-free rate of interest is an exogenously determined interest rate at which investors may borrow or lend without fear of default.

[5] The Board determines the railroad industry's cost of capital for a ''composite railroad,'' which is based on data from Class I carriers that meet certain criteria developed in *Railroad Cost of Capital—1984,* 1 I.C.C.2d 989 (1985), as modified by *Revisions to the Cost-of-Capital Composite Railroad Criteria,* EP 664 (Sub-No. 3) (STB served Oct. 25, 2017).

[6] This data can be retrieved from Refinitiv (formerly Thomson ONE Investment Management). *See Railroad Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 9 (STB served Aug. 6, 2019)

[7] Step MSDCF is similar to the model presented in Aswath Damodaran, *Investment Valuation: Tools & Techniques for Determining the Value of Any Asset* 317 (3d ed. 2012).

[8] The second stage growth rate estimate produced by Morningstar/Ibbotson MSDCF (*i.e.,* the average of the qualifying railroads' individual three- to five-year median growth rates) produced a value of 19.88%, which is significantly higher than the second stage growth rate value of 13.55% reflected in the 2017 cost-of-capital decision. *See R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 17; *R.R. Cost of Capital—2017,* EP 558 (Sub-No. 21), slip op. at 18 (STB served Dec. 6, 2018). Likewise, CSX Corporation's first stage growth rate rose significantly from 15.66% in 2017 to 27.43% in 2018. *See R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 17; *R.R. Cost of Capital—2017,* EP 558 (Sub-No. 21), slip op. at 18.

[9] *See* AAR Comments, V.S. John Gray 45–46, Apr. 22, 2019, *R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22) (''Based on train-miles reported in Annual Report Form R–1, 2015 and 2016 were recession years for the railroad industry, and train-miles have not yet recovered to 2014 levels—even if unit trains (mostly coal) are excluded. Thus, it is not surprising that analysts now have higher growth expectations, especially when considering other factors such as lower tax rates and the implementation of precision scheduled railroading.'').

[10] *See* Letter from E. Hunter Harrison, then-Chairman & Chief Exec. Officer, CSX Corp., in response to August 14, 2017 letter from Board Members, at 1, *www.stb.gov* (open ''Rail Service Data'' under ''Quick Links'' and select ''CSX Response, Service Outlook and Milestones, August 24, 2017'' hyperlink); *see also,* U.S. Dept. of Agric. Grain Transp. Report 2 (Dec. 20, 2018), *http://dx.doi.org/10.9752/TS056.12-20-018.*

[11] For example, significant operating changes like precision scheduled railroading are not like the enactment of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017), which was a one-time occurrence that merited a one-time adjustment to the cost of capital. *See R.R. Revenue Adequacy—*

to cause permanent changes in the industry's growth rates. Once significant operating changes are fully implemented, any rate of growth that accompanied the operating changes may not continue to increase at the same level. Because the operating changes will, and future railroad changes that are currently unknown could, have a significant impact on the Board's cost-of-capital determination, the Board finds that now is an appropriate time to consider the addition of a model that could improve its methodology for estimating the cost-of-equity component of the cost of capital.

As described in more detail below, the Board finds that the addition of Step MSDCF, when used in combination with the current Morningstar/Ibbotson MSDCF and CAPM, could enhance the robustness of the resulting cost-of-equity estimate during periods, like the present one, in which certain railroads are undertaking significant operating changes. Furthermore, consistent with the Board's previous finding, supported by extensive economic literature, that averaging multiple models—based on different perspectives, relying on different inputs, and with different strengths and weaknesses—would produce estimates that are more robust when averaged together,[12] the addition of Step MSDCF would improve the cost-of-capital determination, including during periods of significant operating changes.

Like Morningstar/Ibbotson MSDCF, Step MSDCF proposed here would continue to calculate growth of earnings in three stages. The first and third stages would be identical to those of Morningstar/Ibbotson MSDCF. In the first stage (years one through five), the qualifying railroad's annual earnings growth rate would be the median value of its three- to five-year growth rate estimates and, in the third stage (years 11 and onwards), the growth rate would be the long-run nominal growth rate of the U.S. economy. The growth rate of the second stage (years six through 10) would be a gradual transition between the first and third stages. The transition would begin at year six and step down or up in equal increments each year towards the terminal growth rate (or third stage). The algebraic formula for Step MSDCF is described in full in Appendix A.

The Board proposes to add Step MSDCF to its cost-of-capital methodology based in part on input from commenters in prior proceedings. Since the Board's adoption of its current hybrid methodology in 2009, Western Coal Traffic League (WCTL) has opposed the Board's use of Morningstar/Ibbotson MSDCF in its cost-of-equity calculation. One of WCTL's primary criticisms has been that using the average of all of the qualifying railroads' median growth rates in stage one as the growth rate in stage two is unreasonable because three- to five-year forecasts of earnings growth will not likely be accurate for ten years. *See Use of a Multi-Stage Discounted Cash Flow Model,* EP 664 (Sub-No. 1), slip op. at 8–9. Additionally, WCTL has argued that Morningstar/Ibbotson MSDCF lacks a transition mechanism, which prevents smooth transitions between stages. *See Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 9 (STB served Oct. 31, 2016).

In affirming the reasonableness of Morningstar/Ibbotson MSDCF's second-stage growth rate, the Board has noted that (1) the returns of individual firms should revert to the industry average over time, (2) it is not realistic to predict growth for individual companies beyond five years, and (3) attempting to create smoother transitions between the stages would add more complexity to the model but would not guarantee more precision, in part, because the cost of equity cannot ever be truly known. *See Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 13 (STB served Oct. 31, 2016). The Board continues to believe that Morningstar/Ibbotson MSDCF is reasonable. At the same time, there are other reasonable models based on different perspectives, relying on different inputs, and with different strengths and weaknesses. Forecasting growth rates in years six through 10 is inherently imprecise, and it is not possible to predict whether one model will better reflect future events, particularly when those events must be judged over decades of differing market characteristics. The Board's proposal to incorporate another model to improve the robustness of its overall cost-of-equity estimate implies neither that the Board expects to achieve perfect precision across models nor that the Board's existing models are inadequate. The Board finds it is reasonable to continue to rely on Morningstar/Ibbotson MSDCF as one aspect of its cost-of-capital methodology.

Even so, the Board recognizes that the significant operating changes undertaken by certain individual railroads have given those railroads a significant increase in growth rates that flows through to the second stage of Morningstar/Ibbotson MSDCF, and it is always possible that future railroad changes could have a similar effect. Specifically, because the second-stage growth rate in Morningstar/Ibbotson MSDCF uses the simple average of all qualifying railroads' three- to five-year median growth rate estimates from the first stage, the growth rates in the middle horizon (years six through 10) will be similar to the averages of growth rates in the short term (three- to five-year estimates). By drawing upon the three- to five-year growth rate estimates twice, Morningstar/Ibbotson MSDCF is more sensitive to growth rate changes in the short term, which may involve anomalous increases or decreases, relative to a model with a gradual transition between the first and third stages. While reasonable, Morningstar/Ibbotson MSDCF may not capture information relevant to the middle horizon in the same way as other models.[13] Therefore, the Board's cost-of-equity estimate could yet be made more robust by adding a model, like Step MSDCF, that reflects a different perspective for the middle horizon.[14]

The Board proposes to retain the same CAPM that it has used to calculate the cost of capital since 2008. *See Methodology to be Employed in Determining the R.R. Indus.'s Cost of Capital,* EP 664, slip op. at 2. The Board's current methods for determining the railroad industry's beta and estimating market-risk premium are reasonable. Furthermore, recent

2017 Determination, EP 552 (Sub-No. 22) et al., slip op. at 1–3 (STB served Dec. 6, 2018).

[12] *See Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 11 (STB served Oct. 31, 2016).

[13] The Board has repeatedly rejected WCTL's argument that Morningstar/Ibbotson MSDCF should be abandoned due to what WCTL argues is its flawed second-stage growth rate, but the Board has not previously considered how a MSDCF variation with a different second-stage growth rate could supplement Morningstar/Ibbotson MSDCF. The Board proposes that Step MSDCF could be useful as a supplement, rather than a replacement, for Morningstar/Ibbotson MSDCF because, while Step MSDCF adds a different perspective with respect to growth rates, Step MSDCF may not necessarily be more reasonable than Morningstar/Ibbotson MSDCF in certain periods or over the long term.

[14] In comments submitted for the 2018 cost-of-capital proceeding, AAR stated that Morningstar/Ibbotson MSDCF ''assumes 'that over a middle horizon, growth of any particular company will lie more in line with the industry as a whole,'' which means that ''other companies 'catch' their industry growth leaders, or the leaders fall back to the rate of the slower growth railroads.'' Accordingly, AAR argued that ''[a]ny attempt to change the second stage to a transition stage is corrupting the intent of the model.'' AAR Comments, V.S. John Gray 45, Apr. 22, 2019, *R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22). The Board does not propose to modify Morningstar/Ibbotson MSDCF in this decision. Instead, the Board proposes to add a new model that relies on different assumptions to be used alongside Morningstar/Ibbotson MSDCF. This approach allows the Board to introduce a model that will have a moderating influence on Morningstar/Ibbotson MSDCF while also maintaining the integrity of Morningstar/Ibbotson MSDCF.

operating changes have not demonstrated similar issues in the cost-of-equity estimates produced by CAPM as they have for Morningstar/Ibbotson MSDCF. Accordingly, the Board proposes that to reduce the impact of short-term operating changes on the cost of capital, it is not necessary for the Board to modify CAPM.

CAPM, generally, is a backward-looking model while MSDCF is more forward-looking, each looking at different market data. *R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 3. To maintain an equal balance between forward-looking and backward-looking models, the Board proposes to use a weighted average of the three models in its cost-of-equity calculation, with CAPM weighted at 50%, Morningstar/Ibbotson MSDCF weighted at 25%, and Step MSDCF weighted at 25%. Furthermore, because the Board has not found that MSDCF is superior to CAPM, or vice versa, it is reasonable to use a weighted average of the three models that allows both model types to continue to contribute equally to the cost of equity.

When applied over a 10-year historical analysis period, the weighted average of the three models results in a lower variance than a forecast relying on the average of CAPM and Morningstar/Ibbotson MSDCF alone. For the period 2009 through 2018, the average of CAPM and Morningstar/Ibbotson MSDCF produces a cost of equity ranging from 10.31% to 13.86% with a standard deviation of 1.18. Over the same period, the weighted average of the three models produces estimates between 10.25% and 13.45% with a standard deviation of 1.09. *See* Appendix B.

Adding Step MSDCF to the Board's current methodology for calculating the cost of capital is consistent with the Rail Transportation Policy. 49 U.S.C. 10101. For instance, having a methodology that more robustly estimates the cost-of-equity component of the cost of capital would better ensure that rail carriers are allowed to earn adequate revenues. section 10101(3); *see also Standards for R.R. Revenue Adequacy,* 364 I.C.C. 803, 811 (1981), *aff'd sub nom. Bessemer & Lake Erie R.R.* v. *ICC,* 691 F.2d 1104 (3d Cir. 1982) (concluding that ''the only revenue adequacy standard consistent with the requirements of [The Staggers Rail Act of 1980] is one that uses a rate of return equal to the cost of capital''). As noted, Morningstar/Ibbotson MSDCF is more sensitive to growth rate changes in the short term relative to Step MSDCF, and Step MSDCF may be better suited for some periods, or even over the long run.

Interested parties are invited to comment on the proposed use of Step MSDCF described above in conjunction with CAPM and Morningstar/Ibbotson MSDCF currently used by the Board. Parties are encouraged to address issues such as the most appropriate way to integrate the three models into the cost-of-capital calculation, including the particular weighting that each model should have.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. Section 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as defined by the RFA. Cost of capital is calculated for those Class I carriers that meet certain criteria developed in *Railroad Cost of Capital—1984,* 1 I.C.C.2d 989 (1985), and modified in *Revisions to the Cost-of-Capital Composite Railroad Criteria,* EP 664 (Sub-No. 3) (STB served Oct. 25, 2017). Therefore, the Board's proposed methodology will apply only to Class I rail carriers, and there will be no impact on small railroads. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Additional information supporting the Board's revised proposal is contained in the Board's decision (including appendices) served on October 11, 2019. To obtain a copy of this decision, visit the Board's website at *http://www.stb.gov*.

It is ordered:

1. The Board proposes to revise its methodology for determining the railroad industry's cost of capital as set forth in this decision. Notice of this decision will be published in the **Federal Register**.

2. Comments are due by November 5, 2019. Reply comments are due by December 4, 2019.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

Decided: October 11, 2019.

By the Board, Board Member Begeman, Fuchs, and Oberman.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–22748 Filed 10–17–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 191011–0061]

RIN 0648–BJ01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Trap Fishery of the U.S. Virgin Islands (USVI); Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces the establishment of a control date of September 1, 2017, that the Caribbean Fishery Management Council (Council) may use if it decides to create restrictions limiting participation in the spiny lobster trap fishery in the exclusive economic zone (EEZ) off St. Thomas and St. John, or St. Croix, U.S. Virgin Islands (USVI). Persons entering the fishery in either area after the control date will not be assured of future access should a management regime that limits participation in the fishery be prepared and implemented. NMFS invites comments on the establishment of this control date.

DATES: Written comments must be received by November 18, 2019.

ADDRESSES: You may submit comments identified by ''NOAA–NMFS–2019–0070'' by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0070,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

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

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

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

SUPPLEMENTARY INFORMATION: The spiny lobster trap fishery is managed under the Fishery Management Plan (FMP) for the Spiny Lobster Fishery of Puerto Rico and the USVI. However, NMFS notes that the Council is in the process of transitioning Federal fisheries management in the U.S. Caribbean from four species-based FMPs for Puerto Rico and the USVI to three island-based FMPs (Puerto Rico FMP, St. Thomas and St. John FMP, and St. Croix FMP). The island-based FMPs would manage multiple species, including spiny lobster, within the EEZ defined for each island management area (appendix E to part 622).

Currently in the U.S. Caribbean, which includes Puerto Rico and the USVI, there is no Federal permit for the spiny lobster trap fishery. However, the territorial governments of Puerto Rico, St. Thomas and St. John, and St. Croix issue commercial fishing licenses for their territorial waters.

At their August 2018 meeting, the Council recommended a control date of September 1, 2017, for the spiny lobster trap fishery off the USVI. The control date would apply to persons who have entered or are contemplating entering this fishery after September 1, 2017. The control date would be applicable under the current FMP and it is the Council's intent that is would also be applicable under the island-based FMPs, if approved.

Previously, the Council established a control date of February 10, 2011 (78 FR 20496, April 5, 2013), for the commercial spiny lobster trap fishery in the U.S. Caribbean operating in Federal waters off Puerto Rico and the USVI. At their August 2018 meeting, the Council discussed modifying the previous control date for the spiny lobster trap fishery off the USVI to address more recent concerns presented at that meeting by spiny lobster trap fishermen and the USVI government. Specifically, with the planned implementation of the island-based FMPs, potential increases in annual catch limits for spiny lobster in the EEZ off the USVI could increase fishing effort that would affect the fishery, which historically has been small-scale and market-driven. Both spiny lobster trap fishermen and the USVI government were concerned that, in the future, new participants may establish large-scale operations for harvesting spiny lobster that would impact the ecosystem (*i.e.,* more traps deployed), historical participants, and fishing communities.

In order to preserve and protect the economically and culturally important spiny lobster trap fishery in the USVI, the Council decided to update the previous control date of February 10, 2011, and establish a September 1, 2017, control date for the spiny lobster trap fishery around the USVI. The Council selected September 1, 2017, as the control date because, soon thereafter, Hurricanes Maria and Irma severely curtailed fishing activities in the USVI. Therefore, the Council determined the period prior to September 1, 2017, best represents historic participation in the spiny lobster trap fishery in the USVI. The control date enables the Council to inform current and potential participants that it may consider creating restrictions to limit participation or other measures in the spiny lobster trap fishery around St. Thomas and St. John, or St. Croix, USVI.

The Council requested that this control date be published in the **Federal Register** to notify fishermen that if they entered the fishery after September 1, 2017, they may not be assured of future access if the Council or NMFS decide to limit entry or impose other measures to manage the spiny lobster trap fishery around St. Thomas and St. John, or St. Croix, USVI.

Establishment of this control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the spiny lobster trap fishery around St. Thomas and St. John, or St. Croix, USVI. Fishermen are not guaranteed future participation in the trap fishery regardless of their level of participation before or after the control date. The Council may recommend a different control date or it may recommend a management regime that does not involve a control date. Other criteria, such as documentation of landings or fishing effort, may be used to determine eligibility for participation in a limited access fishery. The Council or NMFS also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council will be taken pursuant to the requirements for fishery management plan and amendment development established under the Magnuson-Stevens Fishery Conservation and Management Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the spiny lobster trap fishery in the EEZ off St. Thomas and St. John, and St. Croix, USVI.

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

Dated: October 15, 2019.

Samuel D. Rauch, III,

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

[FR Doc. 2019–22780 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 202

Friday, October 18, 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

Submission for OMB Review; Comment Request

October 15, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information 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.

Comments regarding this information collection received by November 18, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Certificate of Medical Examination.

OMB Control Number: 0583–0167.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS will use form FSIS 4339–1, Certificate of Medical Examination (with report of medical History), FSIS form 4306–5, Medical Documentation for Employee's Reasonable Accommodation Request, and FSIS form 4630–8, Confidential Medical Information, to collect information from applicant.

Need and Use of the Information: FSIS will use the information from FSIS 4339–1 form to determine whether or not an applicant for an FSIS Food Inspector, Consumer Safety Inspector, or Veterinary Medical Officer in-plant position meets the Office of Personnel Management-approved medical qualification standards for the position. FSIS will use FSIS form 4306–5 to help determine whether the Agency will provide reasonable accommodation to qualified individuals and FSIS form 4630–8 will assist employees who qualify as leave recipients under the FSIS Leave Bank Program, which FSIS intends to establish in accordance with 5 CFR 630, subpart 3. These forms will ensure accurate collection of the required data.

Description of Respondents: Individuals or households.

Number of Respondents: 800.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 809.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22752 Filed 10–17–19; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Grant Exclusive License

AGENCY: Forest Service, U.S. Department of Agriculture (USDA).

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to East 30 Sensors, 1601 Kitzmiller Rd., Pullman, WA 99163, an exclusive license to U.S. Patent No. 10,282,955, ''FOREST FIRE FUEL HEAT TRANSFER SENSOR'', issued on May 7, 2019.

DATES: Comments must be received on or before November 4, 2019.

ADDRESSES: Send comments to: Thomas Moreland, Technology Transfer Coordinator, USDA Forest Service, 443–677–6858, *twmoreland@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Thomas Moreland, Technology Transfer Coordinator, USDA Forest Service, 443–677–6858, *twmoreland@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as East 30 Sensors, 1601 Kitzmiller Rd., Pullman, WA 99163 has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the USDA Forest Service receives written evidence and argument which establishes that the grant of the license would not be

consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator, Agricultural Research Service.

[FR Doc. 2019–22816 Filed 10–17–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Grant Exclusive License

AGENCY: Forest Service, U.S. Department of Agriculture (USDA).

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to East 30 Sensors, 1601 Kitzmiller Rd., Pullman, WA 99163, an exclusive license to U.S. Patent Application No. 16/120,783, ''HIGH TEMPERATURE SOIL PROBE'', filed on September 04, 2018.

DATES: Comments must be received on or before November 4, 2019.

ADDRESSES: Send comments to: Thomas Moreland, Technology Transfer Coordinator, USDA Forest Service, 443–677–6858, *twmoreland@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Thomas Moreland, Technology Transfer Coordinator, USDA Forest Service, 443–677–6858, *twmoreland@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as East 30 Sensors, 1601 Kitzmiller Rd., Pullman, WA 99163 has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the USDA Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator, Agricultural Research Service.

[FR Doc. 2019–22817 Filed 10–17–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey, Fertility Supplement

AGENCY: U.S. Census Bureau, 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: To ensure consideration, written comments must be submitted on or before December 17, 2019.

ADDRESSES: Direct all written comments to Karen G. Woods, Survey Statistician, U.S. Census Bureau, 4600 Silver Hill Road, ADDP/CPS HQ–7H140F, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2019–0010, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. 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. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen G. Woods, U.S. Census Bureau, ADDP/CPS HQ–7H140F, Washington, DC 20233–8400, (301) 763–3806 (or via the internet at *dsd.cps@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the Fertility Supplement to be conducted in conjunction with the June Current Population Survey (CPS). The Census Bureau sponsors the supplement questions, which were previously collected in June 2018, and have been asked periodically since 1971. The current clearance expired March 30, 2019.

This survey provides information used mainly by government and private analysts to project future population growth, to analyze child spacing, and to aid policymakers and private analysts in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

II. Method of Collection

The fertility information will be collected by both personal visit and telephone interviews in conjunction with the regular June CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0610.

Form Number(s): There are no forms. We conduct all interviewing on computers.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 30,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 182; and Title 29, United States Code, Sections 1–9.

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. 2019–22802 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Revised—Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 29, 2019, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session:

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session:

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than October 22, 2019.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 10, 2019 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019–22721 Filed 10–17–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–889]

Dioctyl Terephthalate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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) during the February 3, 2017 through July 31, 2018 period of review (POR). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Laura Griffith, Laurel LaCivita, or Jean Valdez, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6430, (202) 482–4243, or (202) 482–3855, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty (AD) order on dioctyl terephthalate (DOTP) from the Republic of Korea (Korea), covering three companies: Aekyung Petrochemical Co., Ltd. (AKP), LG Chem Ltd. (LG Chem), and Hanwha Chemical Corporation (Hanwha Chemical).[1] 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.[2] On May 23, 2019, we further extended the deadline for the preliminary results in this review to no later than October 10, 2019.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by this order is dioctyl terephthalate (DOTP), regardless of form. DOTP that has been blended with other products is included within this scope when such blends include constituent parts that have not been chemically reacted with each other to produce a different product. For such blends, only the DOTP component of the mixture is covered by the scope of this order. Subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS. While the CAS registry number and HTSUS classification are provided for convenience and customs purposes, the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

[2] *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. This extended the initial deadline for the preliminary results of this review to June 12, 2019.

[3] *See* Memorandum, ''Dioctyl Terephthalate from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 23, 2019.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review: Dioctyl Terephthalate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

written description of the scope of this order is dispositive.[5]

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). We calculated export price and constructed export price in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act. For a full description of the methodology underlying our calculations, *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 *http://enforcement.trade.gov/frn/.* 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 the Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period February 3, 2017 through July 31, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
Aekyung Petrochemical Co., Ltd	0.85
Hanwha Chemical Corporation	22.97
LG Chem, Ltd	0.00

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 covered by this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[6] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If a 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 this review where applicable.

In accordance with our practice, for entries of subject merchandise during the POR for which a respondent did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. 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.[7]

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 each specific company listed above 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 previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.69 percent, the all-others rate established in the LTFV investigation.[8] These deposit requirements, when imposed, shall remain in effect until further notice.

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.[9] Interested parties may submit case briefs 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, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time 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 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

[5] *See* Preliminary Decision Memorandum for a full description of the scope of the order.

[6] In these preliminary results, Commerce applied the assessment rate calculation methodology 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).

[7] *See* section 751(a)(2)(C) of the Act.

[8] *See Dioctyl Terephthalate from the Republic of Korea: Antidumping Duty Order,* 82 FR 39410 (August 18, 2017).

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d)(1).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.310(c).

Constitution Avenue NW, Washington, DC 20230.[15]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[16]

Notification to Importers

This notice also 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 subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 10, 2019.

Christian Marsh,

Deputy 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. Date of Sale
VI. Product Comparisons
VII. U.S. Price
VIII. Normal Value
IX. Currency Conversion
X. Recommendation

[FR Doc. 2019–22776 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–DS–P

[15] *Id.*

[16] *See* section 751(a)(3)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: 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 certain steel nails (nails) from the People's Republic of China (China) were sold in the United States at less than normal value (NV) during the period of review (POR), August 1, 2017 through July 31, 2018.

DATES: Applicable October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Annathea Cook or Benito Ballesteros, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–0250 or (202) 482–7425, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2018, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the antidumping duty order on nails from China [1] for the POR, August 1, 2017 through July 31, 2018.[2] Commerce initiated a review with respect to 213 companies.[3] Pursuant to section 777A(c)(2)(A) of the Tariff Act of 1930, as amended (the Act), Commerce selected three mandatory respondents, The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, Stanley), Shanxi Pioneer Hardware Industrial Co., Ltd. (Pioneer), and Tianjin Universal Machinery Imp. & Exp. Corporation (Universal).[4] On May 13, 2019, Commerce fully extended the deadline for issuing the preliminary results to October 10, 2019.[5]

Scope of the Order

The products covered by this review are certain steel nails from China. For a full description of the scope, *see* the Preliminary Decision Memorandum, dated concurrently with and hereby adopted by this notice.[6]

Preliminary Determination of No Shipments

Based on the no-shipments letters filed by 11 companies, Commerce preliminarily determined that these companies had no shipments during the POR.[7] For additional information regarding this determination, including a list of these companies, *see* the Preliminary Decision Memorandum. Consistent with our assessment practice in non-market economy (NME) administrative reviews, Commerce is not rescinding this review for these companies, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[8]

Separate Rates

Commerce preliminarily determined that information placed on the record by the three mandatory respondents, as well as by the 17 other separate rate applicants, demonstrates that these companies are entitled to separate rate status. *See* Preliminary Results of Review section below. For additional information, *see* the Preliminary Decision Memorandum.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[9] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the weighted-average dumping

[1] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961 (August 1, 2008).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018); *See also* corrections in *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 8 FR 57411, 57414 n.6 (November 15, 2018); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159, 2168 n.7 (February 6, 2019) (collectively, *Initiation Notice).*

[3] *Id.*

[4] *See* Memorandum, ''Respondent Selection for Certain Steel Nails from the People's Republic of China: Sampling Meeting with Outside Parties,'' dated May 10, 2019.

[5] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from December 22, 2018, through January 28, 2019. *See also* Memorandum, ''Ninth Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 13, 2019.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[7] Although Shanxi Yuci Broad Wire Products Co., Ltd. and Certified Products International Inc. each submitted a no shipments letter, they are not among the 213 companies initiated on in this review, and therefore are not subject to this review. Therefore, we only evaluated the no shipment claims of the thirteen companies that submitted no shipments letters and for which this review was initiated.

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[9] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013) (*Sampling Methodology Notice*).

margin determined for the China-wide entity is not subject to change (*i.e.,* 118.04 percent) as a result of this review.[10] Aside from the companies discussed above, Commerce considers all other companies for which a review was requested [11] to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum; *see also* Appendix I for a list of companies considered as part of the China-wide entity.

Sample Rate Calculation

In the *Sampling Methodology Notice,* we stated that, in order to calculate a rate to assign the non-selected companies when using a sampling procedure, Commerce will calculate a ''sample rate'' based upon an average of the rates for the selected respondents, weighted by the import share of their corresponding strata.[12] The respondents selected for individual examination through the sampling process will receive their own rates; all companies in the sample population who were not selected for individual examination will receive the sample rate.[13] Accordingly, we have calculated the sample rate by averaging the rates for the three selected respondents, weighted by the import share of their corresponding strata.[14] The non-selected companies entitled to a separate rate have been assigned the sample rate. For additional information and a discussion of the issues examined with regard to the calculation of the sample rate, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Act. Constructed export prices and export prices have been calculated in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) 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 *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period August 1, 2017 through July 31, 2018:

Exporter/producer	Weighted-average dumping margin
Shanxi Pioneer Hardware Industrial Co., Ltd	13.88
The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc	19.03
Tianjin Universal Machinery Imp. & Exp. Corporation	118.04
Dezhou Hualude Hardware Products Co., Ltd	35.57
Hebei Cangzhou New Century Foreign Trade Co., Ltd	35.57
Mingguang Ruifeng Hardware Products Co., Ltd	35.57
Nanjing Caiqing Hardware Co., Ltd	35.57
Qingdao D&L Group Ltd	35.57
SDC International Aust. Pty. Ltd	35.57
Shandong Qingyun Hongyi Hardware Products Co., Ltd	35.57
Shanghai Curvet Hardware Products Co., Ltd	35.57
Shanghai Yueda Nails Industry Co., Ltd. a.k.a Shanghai Yueda Nails Co., Ltd	35.57
Shanxi Hairui Trade Co., Ltd	35.57
Shanxi Tianli Industries Co., Ltd	35.57
S-Mart (Tianjin) Technology Development Co., Ltd	35.57
Suntec Industries Co., Ltd	35.57
Tianjin Jinchi Metal Products Co., Ltd	35.57
Tianjin Jinghai County Hongli Industry & Business Co., Ltd	35.57
Tianjin Zhonglian Metals Ware Co., Ltd	35.57
Xi'an Metals and Minerals Import & Export Co., Ltd	35.57

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of these preliminary results, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this administrative review are encouraged to submit with

[10] *Id.; Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 18816, 18817 and accompanying Issues and Decision Memorandum.

[11] *See* Appendix I.

[12] *See Sampling Methodology Notice,* 78 FR at 65965.

[13] *Id.*

[14] *See* Memorandum, ''Preliminary Results of the Tenth Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Calculation of the Sample Rate for Respondents Not Selected for Individual Examination,'' dated concurrently with this memorandum (Sample Rate Memorandum).

[15] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. 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 intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce 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 to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[17] Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis,* then cash deposit rate will be zero); (2) for previously examined China and non-China exporters not listed above that at the time of entry are eligible for a separate rate based on a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate at the time of entry, the cash deposit rate will be that for the China-wide entity (*i.e.,* 118.04 percent); and (4) for all non-China exporters of subject merchandise which at the time of entry are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 the POR. 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

This preliminary determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 10, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—China-Wide Entity

1. Air It on Inc.
2. A-Jax Enterprises Ltd.
3. A-Jax International Co. Ltd.
4. Anhui Amigo Imp. & Exp. Co. Ltd.
5. Anhui Tea Imp. & Exp. Co. Ltd.
6. Asiahan Industrial Trading Ltd.
7. Baoding Jieboshun Trading Co., Ltd.
8. Beijing Catic Industry Ltd.
9. Beijing Jinheung Co., Ltd.
10. Beijing Qin-Li Jeff Trading Co., Ltd.
11. Beijing Qin-Li Metal Industries Co., Ltd.
12. Bodi Corporation.
13. Cana (Rizhou) Hardward Co. Ltd.
14. Cangzhou Nandagang Guotai Hardware Products Co., Ltd.
15. Cangzhou Xinqiao Int'l Trade Co. Ltd.
16. Certified Products Taiwan Inc.
17. Changzhou Kya Trading Co. Ltd.
18. Chanse Mechatronics Scientech Development (Jiangsu) Inc.
19. Chia Pao Metal Co. Ltd.
20. China Dinghao Co. Ltd.
21. China Staple Enterprise Co. Ltd.
22. Chinapack Ningbo Imp. & Exp. Co. Ltd.
23. Chite Enterprise Co. Ltd.
24. Chonyi International Co. Ltd.
25. Crelux Int'l Co. Ltd.
26. Daejin Steel Co. Ltd.
27. Dingzhou Baota Metal Products Co. Ltd.
28. Dong E Fuqiang Metal Products Co. Ltd.
29. Dream Rising Co., Ltd.
30. Eco-Friendly Floor Ltd.
31. Ejen Brother Limited.
32. Everglow Inc.
33. Everleading International Inc.
34. Faithful Engineering Products Co. Ltd.
35. Fastening Care.
36. Fastgrow International Co. Inc.
37. Foshan Hosontool Development Hardware Co. Ltd.
38. GD CP International Ltd.
39. GDCP International Co., Ltd.
40. Glori-Industry Hong Kong Inc.
41. Guangdong Meite Mechanical Co. Ltd.
42. Guangdong TC Meite Intelligent Tools Co., Ltd.
43. Hangzhou Orient Industry Co., Ltd.
44. Hebei Jindun Trade Co., Ltd.
45. Hebei Minghao Imp. & Exp. Co. Ltd.
46. Hengtuo Metal Products Co. Ltd.
47. Home Value Co., Ltd.
48. Hongkong Shengshi Metal Products Co., Ltd.
49. Hongyi (HK) Hardware Products Co. Ltd.
50. Huaiyang County Yinfeng Plastic Factory.
51. Hualude International Development Co. Ltd.
52. Huanghua Haixin Hardware Products Co., Ltd.
53. Huanghua Yingjin Hardware Products.
54. Inmax Industries Sdn. Bhd.
55. ITW Construction Products.
56. Jade Shuttle Enterprise Co. Ltd.
57. Jiang Men City Yu Xing Furniture Limited Company.
58. Jiangsu General Science Technology Co. Ltd.
59. Jiangsu Holly Corporation.
60. Jiangsu Huaiyin Guex Tools.
61. Jiangsu Inter-China Group Corp.

[16] *See* 19 CFR 351.212(b).

[17] *See* 19 CFR 351.212(b)(1).

[18] *See* 19 CFR 351.106(c)(2).

62. Jiangu Soho Honry Imp. and Exp. Co. Ltd.
63. Jiaxing TSR Hardware Inc.
64. Jinsco International Corp.
65. Jinsheung Steel Corporation.
66. Koram Inc.
67. Korea Wire Co. Ltd.
68. Liang's Ind. Corp.
69. Liaocheng Minghui Hardware Products.
70. Linyi FlyingArrow Imp. & Exp. Co Ltd.
71. M&M Industries Co., Ltd.
72. Maanshan Lilai International Trade Co. Ltd.
73. Max Co., Ltd.
74. Milkway Chemical Supply Chain Service Co., Ltd.
75. Mingguang Abundant Hardware Products Co. Ltd.
76. Modern Factory For Metal Products.
77. Nailtech Co. Ltd.
78. Nanjing Nuochun Hardware Co. Ltd.
79. Nanjing Tianxingtong Electronic Technology Co. Ltd.
80. Nanjing Tianyu International Co. Ltd.
81. Nanjing Toua Hardware & Tools Co. Ltd.
82. Nanjing Zeejoe International Trade.
83. Nantong Intlevel Trade Co., Ltd.
84. Natuzzi China Limited.
85. Nielsen Bainbridge LLC.
86. Ningbo Adv. Tools Co. Ltd.
87. Ningbo Angelar Trading Co., Ltd.
88. Ningbo Fine Hardware Production Co. Ltd.
89. Ningbo Freewill Imp. & Exp Co., Ltd.
90. Ningbo Langyi Metal Products Co., Ltd.
91. Ningbo Sunrise International Ltd.
92. Ningbo WePartner Imp. & Exp. Co., Ltd.
93. Overseas Distribution Services Inc.
94. Overseas International Steel Industry.
95. Paslode Fasteners Co. Ltd.
96. Patek Tool Co. Ltd.
97. President Industrial Inc.
98. Promising Way (Hong Kong) Ltd.
99. Qingda Jisco Co. Ltd.
100. Qingdao Ant Hardware Manufacturing Co. Ltd.
101. Qingdao D&L Hardware Co. Ltd.
102. Qingdao Gold Dragon Co. Ltd.
103. Qingdao Hongyuan Nail Industry Co. Ltd.
104. Qingdao JCD Machinery Co., Ltd.
105. Qingdao Meijialucky Industry and Co.
106. Qingdao MST Industry and Commerce Co. Ltd.
107. Qingdao Powerful Machinery Co., Ltd.
108. Qingdao Top Metal Industrial Co., Ltd.
109. Qingdao Top Steel Industrial Co. Ltd.
110. Qingdao Uni-Trend International.
111. Quzhou Monsoon Hardware Co. Ltd.
112. Rise Time Industrial Ltd.
113. Romp Coil Nail Industries Inc.
114. R-Time Group Inc.
115. Ruifeng Hardware Products Co., Ltd.
116. Senco Asia Manufacturing Ltd.
117. Shandong Dinglong Imp. & Exp. Co., Ltd.
118. Shandong Liaocheng Minghua Metal Pvt. Ltd.
119. Shanghai Cedargreen Imp. & Exp. Co., Ltd.
120. Shanghai Curvet Hardware, Co., Ltd.
121. Shanghai Haoray International Trade Co. Ltd.
122. Shanghai Seti Enterprise Int'l Co. Ltd.
123. Shanghai Sutek Industries Co., Ltd.
124. Shanghai Yiren Machinery Co., Ltd.
125. Shanghai Yueda Fasteners Co., Ltd.
126. Shanghai Yueda Nails Co. Ltd.
127. Shanghai Zoonlion Industrial Co., Ltd.
128. Shanxi Easyfix Trade Co. Ltd.
129. Shanxi Xinjintai Hardware Co., Ltd.
130. Shaoxing Chengye Metal Producing Co. Ltd.
131. Shenzhen Xinjintai Hardware Co. Ltd.
132. Stanley Black & Decker, Inc.
133. Sueyi International Ltd.
134. Sumec Machinery and Electric Co., Ltd.
135. Suzhou Xingya Nail Co. Ltd.
136. Taizhou Dajiang Ind. Co. Ltd.
137. Test-Rite International Co., Ltd.
138. Theps International.
139. Tianji Hweschun Fasteners Manufacturing Co. Ltd.
140. Tianjin Baisheng Metal Products Co. Ltd.
141. Tianjin Bluekin Indusries Ltd.
142. Tianjin Coways Metal Products Co. Ltd.
143. Tianjin Dagang Jingang Nail Factory.
144. Tianjin Evangel Imp. & Exp. Co. Ltd.
145. Tianjin Fulida Supply Co. Ltd.
146. Tianjin Huixingshangmao Co. Ltd.
147. Tianjin Jin Xin Sheng Long Metal Products Co. Ltd.
148. Tianjin Jinghai Yicheng Metal Pvt.
149. Tianjin Jinlin Pharmaceutical Factory.
150. Tianjin Jinmao Imp. & Exp. Corp. Ltd.
151. Tianjin Lianda Group Co. Ltd.
152. Tianjin Liweitian Metal Technology
153. Tianjin Tianhua Environmental Plastics Co. Ltd.
154. Tianjin Yong Sheng Towel Mill.
155. Tianjin Yongye Furniture Co. Ltd.
156. Tianjin Zhonglian Times Technology.
157. Tianjin Zhongsheng Garment Co. Ltd.
158. Tinjin Tiaolai Import & Export Company Ltd.
159. Tsugaru Enterprise Co., Ltd.
160. Unicorn Fasteners Co. Ltd.
161. Verko Incorporated.
162. Win Fasteners Manufactory (Thailand) Co. Ltd.
163. Wire Products Manufacturing Co., Ltd.
164. Wulian Zhanpeng Metals Co. Ltd.
165. Xiamen Zhaotai Industrial Corp.
166. Yongchang Metal Product Co.
167. Youngwoo Fasteners Co., Ltd.
168. Yuyao Dingfeng Engineering Co. Ltd.
169. Zhanghaiding Hardware Co., Ltd.
170. Zhangjiagang Longxiang Industries Co. Ltd.
171. Zhaoqing Harvest Nails Co. Ltd.
172. Zhejiang Best Nail Industry Co. Ltd.
173. Zhejiang Jihengkang (JHK) Door Ind. Co. Ltd.
174. Zhejiang Saiteng New Building Materials Co., Ltd.
175. Zhejiang Yiwu Yongzhou Imp. & Exp. Co. Ltd.
176. Zhong Shan Daheng Metal Products Co. Ltd.
177. Zhong Shan Shen Neng Metals Products Co. Ltd.
178. Zhucheng Jinming Metal Products Co. Ltd.
179. Zhucheng Runfang Paper Co. Ltd.
180. Beijing Camzone Industry & Trading Co., Ltd.
181. Qingdao YuanYuan Metal Products LLC.
182. Shanxi Fastener & Hardware Products.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Use of Application of Facts Otherwise Available
VI. Use of Adverse Inference
VII. Sample Rate Calculation
VIII. Surrogate Country
IX. Date of Sale
X. Normal Value Comparisons
XI. Factor Valuation Methodology
XII. Comparisons to Normal Value
XIII. Currency Conversion
XIV. Recommendation

[FR Doc. 2019–22763 Filed 10–17–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission, in Part; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) did not make sales of subject merchandise at prices below normal value (NV) during the period of review (POR) August 1, 2017 through July 31, 2018.

DATES: Applicable October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1398.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2015, Commerce issued an antidumping duty (AD) order on passenger tires from China.[1] Several

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*AD Order*).

interested parties requested that Commerce conduct an administrative review of the *AD Order,* and on October 4, 2018, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *AD Order* for 42 producers/exporters for the POR.[2] On January 28, 2019, Commerce exercised its discretion to toll all deadlines by 40 days to account for the shutdown of the Federal government from December 22, 2018 through the resumption of operations on January 29, 2019.[3] On June 10, 2019, and again on September 6, 2019, Commerce extended the time limit for completing the preliminary results of this review. The current extended deadline for completing the preliminary results of this review is October 10, 2019.[4]

Scope of the Order

The products covered by the order are certain passenger vehicle and light truck tires from China. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Commerce preliminarily determines that Shandong New Continent Tire Co., Ltd.'s (New Continent) reported U.S. sales were either export price (EP) or constructed export price (CEP). We calculated EP and CEP sales in accordance with section 772 of the Act. Given that China is a non-market economy (NME) country, within the meaning of section 771(18) of the Act, Commerce calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum, which is incorporated by, and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is provided in Appendix I to this notice.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. Shouguang Firemax Tyre Co., Ltd.; Shandong Wanda Boto Tyre Co., Ltd.; Bridgestone (TIANJIN) Tire Co., Ltd.; Bridgestone Corporation; Cooper (Kunshan) Tire Co., Ltd.; Fleming Limited; Guangrao Taihua International Trade Co., Ltd.; Qingdao Keter International Co., Limited; Qingzhou Detai International Trading Co., Ltd.; Shengtai Group Co., Ltd.; Shandong Guofeng Rubber Plastic Co., Ltd.; Shandong Hengyu Science & Technology Co., Ltd.; Qingdao Jinhaoyang International Co., Ltd.; Riversun Industry Limited; Haohua Orient International Trade Ltd.; Windforce Tyre Co., Limited; Tyrechamp Group Co., Limited; Macho Tire Corporation Limited; Qingdao Lakesea Tyre Co., Ltd.; Safe&Well (HK) International Trading Limited; and Triangle Tyre Co., Ltd. withdrew their respective requests for an administrative review within 90 days of the publication date of the notice of initiation.

No other parties requested an administrative review of the order with respect to the aforementioned companies. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the AD order on passenger tires from China with respect to the listed companies.

Separate Rates

Commerce preliminarily determines that the information placed on the record by New Continent, as well as by the other companies listed in the rate table in the ''Preliminary Results of Review'' section below, demonstrates that these companies are entitled to separate rate status. Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in a market economy investigation. Section 735(c)(5)(A) of the Act instructs Commerce to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In the instant administrative review, New Continent is the only reviewed respondent that received a calculated weighted-average margin. Therefore, for the preliminary results, Commerce has preliminarily determined to assign New Continent's margin to the non-selected separate-rate companies.

In addition, Commerce preliminarily determines that certain companies have not demonstrated their entitlement to separate rate status because: (1) They withdrew their participation from the administrative review; (2) they did not rebut the presumption of *de jure* or *de facto* government control of their operations; or (3) did not timely file their separate rate application and/or certification.[6] *See* Appendix II of this **Federal Register** notice for a complete list of companies not receiving a separate rate.

Commerce is treating the companies for which it did not grant separate rate status as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate (*i.e.,*

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

[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* Memoranda, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review—2017–2018,'' dated June 10, 2019; and ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review—2017–2018,'' dated September 6, 2019.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Rescission, in part; 2017–2018,'' dated October 10, 2019 (Preliminary Decision Memorandum).

[6] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Separate Rate Status,'' dated October 10, 2019 for a complete discussion regarding the companies preliminarily granted or not granted separate rate status.

87.99 percent)[7] is not subject to change.[8]

Adjustments for Export Subsidies

Commerce has preliminarily adjusted New Continent's U.S. price for export subsidies, pursuant to 772(c)(1)(C) of the Act.

Preliminary Results of Review

As a result of this review, we preliminarily determine the weighted-average dumping margins rates to be:

Exporter	Weighted-average dumping margin (percent)
Shandong New Continent Tire Co., Ltd	0.00
Anhui Jichi Tire Co., Ltd	0.00
Crown International Corporation	0.00
Hankook Tire China Co., Ltd	0.00
Jingsu Hankook Tire Co., Ltd	0.00
Kenda Rubber (China) Co., Ltd	0.00
Kinforest Tyre Co., Ltd	0.00
Mayrun Tyre (Hong Kong) Limited	0.00
Qingdao Fullrun Tyre Corp., Ltd	0.00
Qingdao Sunfulcess Tyre Co., Ltd	0.00
Qingdao Transamerica Tire Industrial Co., Ltd	0.00
Shandong Anchi Tyres Co., Ltd	0.00
Shandong Duratti Rubber Corporation Co., Ltd	0.00
Shandong Haohua Tire Co., Ltd	0.00
Shandong Hongsheng Rubber Technology Co., Ltd	0.00
Shandong Longyue Rubber Co., Ltd	0.00
Shandong Province Sanli Tire Manufactured Co., Ltd	0.00
Winrun Tyre Co., Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[9] Rebuttal briefs may be filed no later than five days after case briefs are due, and may respond only to arguments raised in the case briefs.[10] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[11]

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, within 30 days after the date of publication of this notice.[12] Requests should contain the party's name, address, and telephone number, the number of participants in, and a list of the issues to be discussed at, the hearing. Oral arguments at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[14] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[15]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis (i.e.,* less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[17] Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer, and dividing this amount by the total entered value of the sales to the importer.[18] Where the importer did not report entered values, Commerce intends to calculate an importer-specific assessment rate by

[7] *See AD Order,* 80 FR at 47906.

[8] For additional information regarding Commerce's separate rate determinations, *see* the Preliminary Decision Memorandum.

[9] *See* 19 CFR 351.309(c)(ii).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2), (d)(2).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See generally* 19 CFR 351.303.

[15] *Id.* (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[16] *See* 19 CFR 351.212(b)(1).

[17] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[18] *See* 19 CFR 351.212(b)(1).

dividing the amount of dumping for reviewed sales to the importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[19]

Pursuant to Commerce practice, for entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.[20] Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the China-wide entity.

For the companies for which this review is rescinded, antidumping duties will be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions with respect to the companies for which this review is rescinded to CBP 15 days after the publication of this notice.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on POR entries, and for future deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which NV exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except that, if the rate is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all China exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 76.46 percent);[21] and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Partial Rescission of Administrative Review
IV. Scope of the Order
V. Discussion of the Methodology
VI. Recommendation

Appendix II

List of Companies Not Receiving Separate Rate Status

1. Pirelli Tyre Co., Ltd.
2. Qingdao Odyking Tyre Co., Ltd.
3. Tianjin Wanda Tyre Group Co., Ltd.

[FR Doc. 2019–22762 Filed 10–17–19; 8:45 a.m.]

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[19] *See Final Modification,* 77 FR at 8103.

[20] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[21] *See AD Order,* 80 FR at 47904.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–837]

Glycine From Thailand: Antidumping Duty Order

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

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

DATES: Applicable October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766 or Jesus Saenz at (202) 482–8184, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2019, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of glycine from Thailand.[1] On October 8, 2019, the ITC notified Commerce of its final affirmative determination, pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of glycine from Thailand.[2] Further, the ITC determined that critical circumstances do not exist with respect to LTFV imports of glycine from Thailand.

[1] *See Glycine from Thailand: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part,* 84 FR 37998 (August 5, 2019) (*Final Determination*).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation No. 731–TA–1415 (October 8, 2019) (ITC Notification).

Scope of the Order

The product covered by this order is glycine from Thailand. For a complete description of the scope of this order, see the Appendix to this notice.

Antidumping Duty Order

On October 8, 2019, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of glycine from Thailand.[3] As a result, and in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing and publishing this antidumping duty order. Because the ITC determined that imports of glycine from Thailand are materially injuring a U.S. industry, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on the subject merchandise from Thailand.

As a result of the ITC Notification, in accordance with section 736(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of glycine from Thailand. Antidumping duties will be assessed on unliquidated entries of glycine from Thailand entered, or withdrawn from warehouse, for consumption on or after August 5, 2019, the date of publication of the *Final Determination.*[4]

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) and (C) and section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of glycine from Thailand. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import duties on this merchandise, cash deposits of estimated antidumping duties for each entry of subject merchandise equal to the rates noted below. The all-others rate applies to all other producers or exporters not specifically listed. These instructions suspending liquidation will remain in effect until further notice.

Critical Circumstances

The ITC found no critical circumstances on LTFV imports of glycine from Thailand. Accordingly, we will instruct CBP to lift suspension and to refund all cash deposits made to secure the payment of estimated antidumping duties with respect to entries of glycine from Thailand entered, or withdrawn from warehouse, for consumption on or after May 7, 2019 (*i.e.,* 90 days prior to the date of publication of the *Final Determination*), but before August 5, 2019 (*i.e.,* the date of publication of the *Final Determination*).

Estimated Weighted-Average Dumping Margins

The estimated weighted-average antidumping duty margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Newtrend Food Ingredient (Thailand) Co., Ltd	227.17
All Others	201.59

Notifications to Interested Parties

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

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

Dated: October 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this order if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2019–22764 Filed 10–17–19; 8:45 am]

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[3] *Id.*

[4] *See Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part, 2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain producers and exporters of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR) January 1, 2017 through December 31, 2017.

DATES: Applicable October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2015, Commerce issued a countervailing duty (CVD) order on passenger tires from China.[1] Several interested parties requested that Commerce conduct an administrative review of the *CVD Order,* and on October 4, 2018, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *CVD Order* for 46 producers/exporters for the POR.[2] 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.[3]

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*CVD Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for

Continued

Scope of the Order

The products covered by the order are certain passenger vehicle and light truck tires from China. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this CVD review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.[6]

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 on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. We received timely withdrawals of the requests for review, for which no other parties requested a review, for the following companies: Guangrao Taihua International Trade Co., Ltd., Qingdao Keter International Co., Limited, Qingdao Odyking Tyre Co., Ltd., Qinzhou Detai International Trading Co., Ltd., Shengtai Group Co., Ltd., Shouguang Firemax Tyre Co., Ltd., Pirelli Tyre Co., Ltd., Shandong New Continent Tire Co., Ltd., Shandong Guofeng Rubber Plastics Co., Ltd., Qingdao Jinhaoyang International Co., Ltd., and Maxon Int'l Co., Limited.[7] Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the CVD order on passenger tires from China with respect to these companies.

Preliminary Results of Review

As a result of this review, we preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent *ad valorem*)
Cooper (Kunshan) Tire Co., Ltd	51.09
Shandong Longyue Rubber Co., Ltd	71.13
Non-Selected Companies Under Review	56.99

Preliminary Rate for the Non-Selected Companies Under Review

The statute and the Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce as a general rule to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis,* or rates based entirely on facts available. In this review, the preliminary subsidy rates calculated for Cooper and Longyue and their cross-owned affiliates are above *de minimis* and are not based entirely on facts available. Therefore, for the companies for which a review was requested that were not selected as mandatory company respondents and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rate on the weighted-average subsidy rates derived from Cooper and Longyue's publicly available information. For a list of these non-selected companies, please see Appendix II to this notice.

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of publication of this notice in the **Federal Register**.[8] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[9] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs)

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* ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Rescission, in part, 2017,'' dated concurrently with this notice (Preliminary Decision Memorandum) and hereby adopted by this notice.

[5] *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.

[6] A list of topics discussed in the Preliminary Decision Memorandum can be found as an appendix to this notice.

[7] *See* Letters from Guangrao Taihua International Trade Co., Ltd., Qingdao Keter International Co., Limited, Qingdao Odyking Tyre Co., Ltd., Qinzhou Detai International Trading Co., Ltd., Shengtai Group Co., Ltd., and Shouguang Firemax Tyre Co., ''Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated December 30, 2018; Pirelli Tyre Co., Ltd.'s Letter, ''Pirelli's Withdrawal of Request for Administrative Review,'' dated December 28, 2018; Shandong New Continent Tire Co., Ltd.'s Letter, ''New Continent Withdrawal of Review Request for POR 3 of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires (PVLT) from the People's Republic of China (C–570–017),'' dated December 26, 2018; Shandong Guofeng Rubber Plastics Co., Ltd.'s Letter, ''Passenger Vehicle and Light Truck Tires From the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated December 21, 2018; Qingdao Jinhaoyang's Letter, ''Jinhaoyang's Withdrawal of Request for Administrative Review,'' dated December 18, 2018; Maxon Int'l Co., Limited's Letter, ''Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated December 7, 2018; American Pacific Industries, Inc.'s Letter, ''Passenger Vehicle and Light Truck Tires From the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated December 28, 2019; American Pacific Industries, Inc.'s Letter, ''Passenger Vehicle and Light Truck Tires From the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated December 19, 2019; and ITG Voma Corporation's Letter, ''Passenger Vehicle and Light Truck Tires From the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated December 21, 2018.

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c)–(d), 19 CFR 351.310(c).

within five days after the time limit for filing case briefs.[10] Rebuttal briefs must be limited to issues raised in the case briefs.[11] Parties who submit case or rebuttal briefs 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.[12]

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, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[13] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[15] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended, pursuant to section 751(a)(3)(A) of the Act, we intend 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 issuance of these preliminary results.

Assessment Rates and Cash Deposit Requirement

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, CVDs on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review. For companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2017 through December 31, 2017, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated CVDs, in the amounts shown above for each of the respective companies shown above, on 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 at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Partial Rescission of Review
IV. Non-Selected Companies Under Review
V. Scope of the Order
VI. Diversification of China's Economy
VII. Subsidies Valuation
VIII. Interest Rate Benchmarks, Discount Rates, Input, and Electricity Benchmarks
IX. Use of Facts Otherwise Available and Application of Adverse Inferences
X. Analysis of Programs
XI. Disclosure and Public Comment
XII. Conclusion

Appendix II

Non-Selected Companies Under Review

1. Anhui Jichi Tire Co., Ltd.
2. Bridgestone (Tianjin) Tire Co., Ltd.
3. Bridgestone Corporation.
4. Dynamic Tire Corp.
5. Fleming Limited.
6. Hankook Tire China Co., Ltd.
7. Haohua Orient International Trade Ltd.
8. Husky Tire Corp.
9. Jiangsu Hankook Tire Co., Ltd.
10. Macho Tire Corporation Limited.
11. Mayrun Tyre (Hong Kong) Limited.
12. Qingdao Fullrun Tyre Corp., Ltd.
13. Qingdao Lakesea Tyre Co., Ltd.
14. Qingdao Sunfulcess Trye Co., Ltd.
15. Riversun Industry Limited.
16. Safe &Well (HK) International Trading Limited.
17. Sailun Jinyu Group Co., Ltd.
18. Sailun Jinyu Group (Hong Kong) Co., Limited.
19. Sailun Tire International Corp.
20. Seatex International Inc.
21. Seatex PTE. Ltd.
22. Shandong Achi Tyres Co., Ltd.
23. Shandong Anchi Tyres Co., Ltd.
24. Shandong Duratti Rubber Corporation Co., Ltd.
25. Shandong Haohua Tire Co., Ltd.
26. Shandong Hengyu Science & Technology Co., Ltd.
27. Shandong Jinyu Industrial Co., Ltd.
28. Shandong Province Sanli Tire Manufactured Co., Ltd.
29. Shandong Wanda Boto Tyre Co., Ltd.
30. Triangle Tyre Co., Ltd.
31. Tyrechamp Group Co., Limited.
32. Windforce Tyre Co., Limited.
33. Winrun Tyre Co., Ltd.

[FR Doc. 2019–22765 Filed 10–17–19; 8:45 am]

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[10] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).
[11] *See* 19 CFR 351.309(d)(2).
[12] *See* 19 CFR 351.309(c)(2) and (d)(2).
[13] *See* 19 CFR 351.310(c).
[14] *See* 19 CFR 351.310.
[15] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–807; A–351–842; A–570–022; C–570–023; A–560–828; C–560–829]

Certain Uncoated Paper Products From Australia, Brazil, the People's Republic of China, and Indonesia: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders

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

SUMMARY: In response to requests from Domtar Corporation; Packaging Corporation of America; North Pacific Paper Company; Finch Paper LLC; United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners), the U.S. Department of Commerce (Commerce) is initiating an anti-circumvention inquiry. In this inquiry, Commerce intends to determine whether certain imports of sheeter rolls of uncoated paper exported from Australia, Brazil, the People's Republic of China (China), and Indonesia, and completed by conversion into sheets of paper in the United States, are circumventing the antidumping and countervailing duty orders on certain uncoated paper sheets. Commerce declines to initiate an anti-circumvention inquiry on Portugal at this time.

DATES: Applicable October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3251.

SUPPLEMENTARY INFORMATION:

Background

Antidumping duty orders on certain uncoated paper (uncoated paper) from Australia, Brazil, China, Indonesia, and Portugal, and countervailing duty orders on uncoated paper from China and Indonesia (collectively, the *Orders*), were published on March 3, 2016.[1] On September 1, 2017, Commerce issued the affirmative final determination in a prior anti-circumvention inquiry, finding that imports into the United States of uncoated paper with a GE brightness of 83 +/ − 1 percent and otherwise meeting the description of in-scope merchandise are covered by the *Orders*.[2]

On August 2, 2019, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(c)(1), the petitioners submitted a request that Commerce initiate an anti-circumvention inquiry of the *Orders* based on an allegation of minor completion or assembly of merchandise in the United States, and that Commerce find that the paper rolls at issue should be subject to the *Orders*.[3] Specifically, the petitioners allege that imports of uncoated paper rolls known as ''sheeter rolls'' from countries under the *Orders* are being cut into individual sheets of paper in the United States in circumvention of the *Orders*.[4]

On August 14, 2019, Commerce sent the petitioners a questionnaire to obtain additional information regarding their allegations.[5] On August 23, 2019, the petitioners filed their response to Commerce's questionnaire.[6]

On August 27, 2019, we received comments from several interested parties. Indonesian paper producers PT. Indah Kiat Pulp and Paper Tbk; PT. Pindo Deli Pulp and Paper Mills; and PT. Pabrik Kertas Tjiwi Kimia TBK (collectively, PT Paper) filed comments opposing initiation on the petitioners' circumvention claims.[7] The Navigator Company, S.A. (Navigator) filed comments opposing initiation of the petitioners' circumvention claims with respect to Portugal, stating that it has not sold sheeter rolls in the United States since the *Orders* were issued, but acknowledging that it has exported web rolls to the United States.[8] Suzano S.A. and Suzano Pulp and Paper America, Inc. (collectively, Suzano) filed comments opposing initiation, stating that their imports of sheeter rolls have not increased since the *Orders* were issued, and arguing that, if an anti-circumvention inquiry is initiated, the scope should be specifically defined to exclude web rolls.[9]

On September 9, 2019, we issued a letter to the petitioners clarifying the deadline associated with this anti-circumvention inquiry.[10] Commerce required supplemental information in order to make a determination of whether to initiate the inquiry, and this information was not available until the Petitioners' August 23 Response. Therefore, Commerce stated that the 45-day period to initiate or issue a final ruling on the Initiation Request established by 19 CFR 351.225(c)(2) started August 23, 2019. On October 7, 2019, Commerce extended by three days the deadline to issue a final ruling or to initiate an inquiry based on the petitioners' request. The new deadline is October 10, 2019.[11]

Scope of the Orders

The merchandise covered by these orders include uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level[12] of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ''printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000,

[1] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11174 (March 3, 2016); *see also Certain Uncoated Paper from Indonesia and the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 81 FR 11187 (March 3, 2016) (collectively, the *Orders*).

[2] *See Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 82 FR 41610 (September 1, 2017).

[3] *See* Petitioners' letter, ''Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Petitioners' Request for an Anti-Circumvention Inquiry Pursuant to Section 781(a) of the Tariff Act of 1930,'' dated August 2, 2019 (Initiation Request).

[4] *Id.* at 1–2.

[5] *See* Commerce's Letter, ''Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Anticircumvention Inquiry Questionnaire,'' dated August 14, 2019.

[6] *See* Petitioners' Letter, ''Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Petitioners' Response to the Department's Questions Regarding Petitioners' Request for Anti-Circumvention Inquiries,'' dated August 23, 2019 (Petitioners' August 23 Response).

[7] *See* PT Paper's Letter, ''Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal, Response to Request for a Circumvention Inquiry,'' dated August 23, 2019.

[8] *See* Navigator's Letter, ''Certain Uncoated Paper from Portugal: Navigator's Response to Petitioners' Request for an Anti-Circumvention Inquiry and Questionnaire Response,'' dated August 27, 2019.

[9] *See* Suzano's Letter, ''Certain Uncoated Paper from Brazil: Response to Petitioners' Request for an Anticircumvention Inquiry,'' dated August 27, 2019.

[10] *See* Commerce's Letter, ''Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Anti-Circumvention Inquiry,'' dated September 9, 2019.

[11] *See* Memorandum, ''Certain Uncoated Paper Products from Australia, Brazil, China, Indonesia, and Portugal: Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders,'' dated October 7, 2019.

[12] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ''Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry, as requested by the petitioners, covers imports of rolls of uncoated paper commonly known as ''sheeter rolls'' from Australia, Brazil, China, Indonesia, and Portugal that are further processed in the United States to create individual sheets of uncoated paper that would be subject to the *Orders.* Sheeter rolls are designed to be converted into sheets of uncoated paper using specialized cutting machinery prior to printing, and are typically, but not exclusively, between 52 and 103 inches wide and 50 inches in diameter. Rolls of uncoated paper at issue in this inquiry are classified under Harmonized Tariff Schedule (HTS) code 4802.55.

Initiation of Anti-Circumvention Inquiry

Section 781(a) of the Act provides that Commerce may find circumvention of an antidumping or countervailing duty order when merchandise of the same class or kind subject to the order is completed or assembled in the United States from parts or components produced in the country subject to the order. In conducting an anti-circumvention inquiry under section 781(a) of the Act, Commerce will rely on the following criteria: (A) The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of an antidumping duty order or countervailing duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise. As discussed below, the petitioners provided evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioners state that the uncoated paper sheets that result from converting sheeter rolls exported to the United States from the countries subject to the *Orders* are the same class or kind of merchandise as the uncoated paper covered by the *Orders.*[13] The petitioners note that sheeter rolls were not explicitly included or excluded from the scope of the *Orders,* and that sheeter rolls are not used for any purpose but subsequent conversion into sheets of paper.[14] When the paper comprising the sheeter roll otherwise meets the scope of the *Orders* (*e.g.,* brightness levels, weight per square meter, *etc.*), the sheets of paper resulting from the conversion process are identical to subject merchandise.[15] The petitioners provided affidavits and supporting information in the form of ship manifest data and United States International Trade Commission import data (ITC data) from 2011 through May 2019 suggesting that Brazilian, Chinese, and Indonesian exporters and producers are exporting sheeter rolls to the United States and contracting with converters in the United States to cut sheets of paper from the rolls, resulting in merchandise identical to that which is subject to the *Orders.*[16] Additionally, the petitioners provided a photograph of a ream of copy paper sold by United States retailer Costco Wholesale Corporation (Costco), printed with an identifier code for Brazilian paper producer Suzano and the Forestry Stewardship Council code for the United States paper converter Performance Office Papers (Performance).[17] The petitioners also provided shipping records (*i.e.,* shipment manifest data and/or bills of lading) indicating uncoated paper rolls have been exported from Australia, Brazil, China, and Indonesia to the United States in 2018 and 2019.[18] The petitioners stated they were unable to locate public ship manifest data for uncoated paper rolls imported to the United States from Portugal. Instead, the petitioners provided ship manifest data for shipments from Portugal to Mexico via U.S. ports, and evidence that some of those shipments were to a Mexican converter.[19] The petitioners also provided data from 2016 through May 2019 from the Eurostat Comext Database, indicating that the volume of exports of uncoated paper rolls from Portugal is increasing to the United States and is decreasing to other countries.[20]

B. Completion of Merchandise in the United States

Section 781(a)(1)(B) of the Act requires Commerce to determine whether the merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the countries to which the *Orders* apply. The petitioners presented evidence demonstrating how sheeter rolls are completed in the United States by conversion from rolls into sheets. The petitioners provided affidavits stating that some paper conversion operations in the United States have increased their sheeting capacity and contracted with importers of sheeter rolls to convert rolls into sheets of uncoated paper.[21] The petitioners provided shipping records (*i.e.,* shipment manifest data and/or bills of lading) indicating paper rolls have been exported from Australia, Brazil, China, and Indonesia to the United States in 2018 and 2019.[22] Additionally, the petitioners provided a photograph of a ream of copy paper sold by Costco, printed with an identifier code for Brazilian paper producer Suzano and the Forestry Stewardship Council code for the United States paper converter Performance.[23] The petitioners also provided bills of lading from 2018 and 2019 supporting their allegation that paper rolls were imported from China and Indonesia to the United States for conversion.[24] The petitioners submitted evidence demonstrating imports of uncoated paper rolls based on ITC data in the years following issuance of the *Orders.* In the case of Australia, Brazil, Indonesia, and Portugal, these data demonstrate an increase in such imports.[25] However, with regard to Portugal, the petitioners did not provide similar supporting data or affidavits indicating that Portuguese exporters are exporting sheeter rolls, and not web

[13] *See* Initiation Request at 7; *see also* Petitioners' August 23 Response at 3–4.

[14] *See* Initiation Request at 5–6.

[15] *Id.* at 7, *citing* Exhibit 1; *see also* Petitioners' August 23 Response at 3–4.

[16] *See* Initiation Request at Exhibits 1 and 3*; see also* Petitioners' August 23 Response at Exhibits 8–10.

[17] *See* Petitioners' August 23 Response at 4–5 and Exhibit 8.

[18] *See* Initiation Request at Exhibits 4, 8, and 9; *see also* Petitioners' August 23 Response at 5–7 and Exhibits 8–12.

[19] *See* Petitioners' August 23 Response at 22–23 and Exhibit 14.

[20] *See* Petitioners' August 23 Response at 21.

[21] *See* Initiation Request at Exhibits 1 and 3.

[22] *See* Initiation Request at Exhibits 4, 8, and 9; *see also* Petitioners' August 23 Response at 5–7 and Exhibits 8–12.

[23] *See* Petitioners' August 23 Response at 4–5 and Exhibit 8.

[24] *Id.* at 5–6 and Exhibit 10.

[25] *Id.* at Exhibit 2. As noted below, the import data is based on an HTS code that is a basket category including both sheeter rolls (which are allegedly circumventing the *Orders*) and web rolls (which are not).

rolls, into the United States. In addition, the petitioner did not submit any evidence demonstrating that rolls from Portugal were being converted to subject merchandise in the United States.

C. Minor or Insignificant Process

Under sections 781(a)(1)(C) and 781(a)(2) of the Act, Commerce is required to consider five factors to determine whether the process of assembly or completion is minor or insignificant. The petitioners allege that the process of converting sheeter rolls into uncoated paper sheets in the United States is a minor and insignificant process, and that the processing occurring in the United States adds relatively little to the overall value of the finished uncoated paper sheets.[26]

(1) Level of Investment in the United States

The petitioners provided affidavits estimating the costs involved in establishing a sheeting operation in the United States, based on their own costs to process sheeter rolls into sheets of paper in the United States and the cost of certain equipment to convert sheeter rolls into sheets.[27] The affidavits explain that the costs to complete processing of sheeter rolls into sheets of paper, including labor, energy, maintenance, overhead, and depreciation, comprise a very small percentage of the total value of sheeted uncoated paper sold in the United States.[28] Additionally, they provided documentation of the actual costs involved in establishing a paper conversion facility in the United States and data related to production costs.[29] The petitioners provided evidence that the cost to establish a sheeting operation is less than one percent of the cost to establish a fully-integrated paper production facility.[30] Further, the petitioners note that if foreign producers of paper from countries subject to the *Orders* are contracting with paper converters already based in the United States, the investment in U.S. production facilities by foreign producers is extremely minimal.[31]

(2) Level of Research and Development in the United States

The petitioners assert that uncoated paper production is an established, mostly automated, process, and that there has been no significant, recent advancement in the sheeting process.[32] As such, the level of research and development to produce uncoated paper sheets from sheeter rolls is minimal to non-existent.[33]

(3) Nature of Production Process in the United States

According to the petitioners, and based on their own experience, the additional processing undertaken at converting facilities in the United States is minimal.[34] The process of slicing sheeter rolls into individual sheets of paper is a rapid and simple process that involves cutting the rolls into sheets, checking the surface quality, removing defective sheets, and packaging the sheets into reams, which are stacked, palletized, and delivered.[35] Conversely, the manufacturing process to produce uncoated sheets of paper from the beginning of the production process is much more complex. Specifically, the manufacturing process for uncoated paper sheets consists of five production phases: (1) Debarking and converting logs into chips, or alternately sourcing chips from sawmills; (2) chemically pulping and bleaching the chips; (3) forming the paper, pressing out excess water, and drying; (4) applying heat and pressure to achieve specific finish characteristics such as smoothness (''calendering'') and then rolling onto reels and slitting into smaller rolls; and (5) cutting rolls into sheets, quality control and removal of defective sheets, packaging into reams, and stacking reams for delivery.[36]

(4) Extent of Production Facilities in the United States

The petitioners provided evidence, including affidavits, to demonstrate that converting sheeter rolls into sheets of paper is a simple operation that requires minimal personnel and only basic production facilities and equipment to slit rolls into sheets and then package the resulting sheets.[37]

(5) Value of Processing in the United States

The petitioners assert, based on their own experience and industry data, that the production of sheeter rolls in the countries subject to the *Orders* account for a large percentage of the total value of the finished uncoated paper sheets that are produced in the United States.[38] Using information provided in an affidavit, the petitioners state that the price of sheeter rolls of uncoated paper is the vast majority of the price of finished uncoated paper sheets.[39] The petitioners maintain that the completion activities in the United States add very little value to the final cost of the uncoated paper sheets cut in the United States from sheeter rolls manufactured in the countries subject to the *Orders* and imported to the United States.[40] The petitioners further provided internal data from petitioner North Pacific Paper Company to support their description of sheeting costs.[41]

D. Value of Merchandise Produced in the Foreign Countries Is a Significant Portion of the Value of the Merchandise

The petitioners argue that the evidence, as discussed above, in their anti-circumvention inquiry request clearly supports their position that the value of sheeter rolls manufactured in the countries subject to the *Orders* represents a significant portion of the total value of the merchandise exported to the United States for processing into uncoated paper sheets, as measured by a percentage of the total cost of manufacture.[42]

E. Additional Factors To Consider in Determining Whether Inquiry Is Warranted

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the order, such as: (A) The pattern of trade, including sourcing patterns; (B) any affiliations; and (C) whether imports into the United States have increased after initiation of the underlying investigation.

[26] *Id.* at 2.

[27] *See* Initiation Request at Exhibit 1, 3, and 11; *see also* Petitioners' August 23 Response at Exhibits 2 and 3.

[28] *Id.*

[29] *See* Petitioners' August 23 Response at 11–15 and Exhibits 18, 19, and 20.

[30] *See* Initiation Request at Exhibit 1.

[31] *See* Initiation Request at 21–22.

[32] *Id.* at Exhibit 1.

[33] *Id.*

[34] *Id.* at 2 and Exhibits 1 and 3; *see also* Petitioners' August 23 Response at 11–16 and Exhibits 2,3,7, and 18.

[35] *See* Initiation Request. at 8, *citing Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal,* U.S. International Trade Commission, Investigation Nos. 701–TA–528–529 and 731–TA–1264–1268 (February 2016) Publication 4592, at I–11 to I–13 (Attachment 1).

[36] *Id.* at 7–8.

[37] *Id.* at Exhibits 1 and 3; *see also* Petitioners' August 23 Response at 11–15 and Exhibits 7, 18, 19, and 20.

[38] *Id.* at 25, *citing* Exhibit 1.

[39] *Id.*

[40] *Id.; see also* Petitioners' August 23 Response at 12–13, 16, and Exhibits 2, 3, and 20.

[41] *See* Petitioners' August 23 Response at Exhibits 18 and 19.

[42] *See* Initiation Request at 24–25.

(1) Pattern of Trade

The petitioners state that the record evidence demonstrates that, since the imposition of the *Orders,* a pattern of trade illustrates circumvention because imports of sheeter rolls from countries subject to the *Orders* have increased, while imports of uncoated paper sheets have decreased.[43] Publicly-available import data submitted by the petitioners show that, prior to the imposition of the *Orders,* exports of paper rolls under the HTS code which includes sheeter rolls from Brazil, Indonesia, and Portugal to the United States were very low.[44] Exports of paper rolls from Australia and China to the United States were relatively high. Imports of paper rolls into the United States from Australia, Brazil, Indonesia, and Portugal have increased since the imposition of the *Orders.*[45]

(2) Affiliation

The petitioners provided no information indicating potential affiliation between producers of sheeter rolls from countries subject to the *Orders* and companies in the United States with facilities to convert sheeter rolls into uncoated paper sheets. In affidavits, the petitioners indicated that the foreign producers are believed to have contracted with converters in the United States for conversion services.[46]

(3) Imports after Initiation of the Investigation

The petitioners presented import data indicating that shipments of paper rolls from Australia, Brazil, Indonesia, and Portugal have increased since the initiation of the investigation, whereas shipments of uncoated paper sheets from Australia, Indonesia, and Portugal have steadily declined.[47]

Conclusion

Based on our analysis of the petitioners' anti-circumvention inquiry request, Commerce determines that the petitioners have satisfied the criteria under section 781(a) of the Act to warrant the initiation of an anti-circumvention inquiry on sheeter rolls of uncoated paper from Australia, Brazil, China, and Indonesia which are further processed into sheets of uncoated paper and sold in the United States. Accordingly, we are initiating an anti-circumvention inquiry on sheeter rolls of uncoated paper from Australia, Brazil, China, and Indonesia pursuant to section 781(a) of the Act.

Further, we decline to initiate an anti-circumvention inquiry for sheeter rolls of uncoated paper from Portugal. The import data submitted by the petitioners for patterns of trade is a basket category that includes both web and sheeter rolls and, as such, these data do not establish that Portuguese sheeter rolls specifically are being exported to the United States for conversion into sheets.[48] Moreover, there is no additional evidence that U.S. imports of sheeter rolls from Portugal are being converted into and sold as sheets. As noted above, the ship manifest data on the record for Portugal indicated that imports from Portugal were entering U.S. ports, but those shipments' final destination was Mexico.[49] Therefore, we find that the petitioners did not provide sufficient evidence to support their claim that sheeter rolls from Portugal are being converted and sold as sheets which are physically identical to the subject merchandise, as they did in their request for the other countries. However, this decision does not preclude the petitioners from re-filing their request with respect to Portugal at a later time with additional evidence.

In connection with this anti-circumvention inquiry, in order to determine: (1) The extent to which sheeter rolls sourced from Australia, Brazil, China, and Indonesia are further processed into uncoated sheets of paper in the United States; (2) the extent to which a country-wide finding applicable to all such exports might be warranted, as alleged by the petitioners; and (3) whether the process of turning sheeter rolls sourced from countries subject to the *Orders* into finished uncoated paper sheets in the United States is minor or insignificant, Commerce intends to issue questionnaires to solicit information from producers and exporters in Australia, Brazil, China, and Indonesia concerning shipments of sheeter rolls to the United States. Commerce also intends to establish a schedule for questionnaires and comments for this inquiry. Companies failing to respond completely and timely to Commerce's questionnaire may be deemed uncooperative and an adverse inference may be applied in determining whether such companies are circumventing the *Orders.*[50]

Commerce will not order the suspension of liquidation of entries of any additional merchandise at this time. In accordance with 19 CFR 351.225(1)(2), if Commerce issues an affirmative preliminary determination of circumvention, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require cash deposits of estimated antidumping duties, at the applicable rates, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

In the event we issue a preliminary affirmative determination of circumvention pursuant to section 781(a) of the Act (further manufactured in the United States), we intend to notify the International Trade Commission, in accordance with section 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C), if applicable.

In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this notice.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: October 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–22766 Filed 10–17–19; 8:45 am]

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[43] *Id.* at 23.

[44] *See supra,* fn. 25.

[45] *Id.* at Exhibit 2.

[46] *Id.* at Exhibits 1 and 3.

[47] *Id.* at Exhibit 2.

[48] *See* Petitioners' August 23 Response at 3.

[49] *Id.* at Exhibit 14.

[50] *See* section 776 of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

Developing the Administration's Approach To Supporting Economic Recovery in Venezuela

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice; request for public comments.

SUMMARY: On behalf of the U.S. Administration, the International Trade Administration (ITA) is requesting comments on ways the Administration can support economic recovery following leadership transition in Venezuela. This request supplements on-going outreach the Administration is conducting with the private sector intended to inform our engagement going forward.

DATES: Comments should be received by 11:59 p.m. Eastern Daylight Time on October 29, 2019.

ADDRESSES: Written comments may be submitted by email to *SUPPORTVENEZUELA@trade.gov.* Comments submitted by email should

be machine readable and should not be copy protected. Written comments also may be submitted by mail to the International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 32019, Attn: SUPPORTVENEZUELA REQUEST FOR COMMENTS, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: *SUPPORTVENEZUELA@trade.gov*. Please address your written comments to Lynn Costa at 202–482–5027.

SUPPLEMENTARY INFORMATION: On January 23, 2019 the United States recognized Juan Guaido as the interim President of Venezuela and called on Nicolas Maduro to step aside in favor of a legitimate leader. The United States and more than fifty-three other countries have now recognized Juan Guaido as the Interim President of Venezuela.

On January 25, 2019, President Donald J. Trump issued Executive Order 13857, which laid out additional steps that the United States is taking to address the national emergency with respect to Venezuela. In that Executive Order, President Trump highlighted ''actions by persons affiliated with the illegitimate Maduro regime, including human rights violations and abuses in response to anti-Maduro protests, arbitrary arrest and detention of anti-Maduro protestors, curtailment of press freedom, harassment of political opponents, and continued attempts to undermine the Interim President of Venezuela and undermine the National Assembly, the only legitimate branch of government duly elected by the Venezuelan people.''

On January 25, 2019 Secretary of State Michael R. Pompeo certified the authority of Venezuela's interim President Juan Guaido to receive and control certain property in accounts of the Government of Venezuela or Central Bank of Venezuela held by the Federal Reserve Bank of New York or any other U.S. insured banks, in accordance with Section 25B of the Federal Reserve Act. In order to facilitate the transition to a post-Maduro government in Venezuela, the Administration is considering steps it can take to assist Venezuela's economic recovery after the illegitimate Maduro regime has left Caracas, and we are seeking public input from policy experts, the business community, and others regarding steps this Administration should take.

Instructions for Commenters: This is a general solicitation of comments from the public. We invite comments on the issue presented by this RFC and on issues that are not specifically raised. Comments that contain references to specific court cases, studies, and/or research should include copies of the referenced materials along with the submitted comments. Commenters should include the name of the person or organization filing the comment, as well as a page number on each page of the submissions. All personal identifying information (for example, name or address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Dates: October 9, 2019.

Anthony Diaz,

Program Analyst.

[FR Doc. 2019–22442 Filed 10–16–19; 11:15 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR049

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction Activities for the Statter Harbor Improvement Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the City of Juneau for authorization to take marine mammals incidental to vibratory and impact pile driving, vibratory pile removal, and down the hole drilling in Auke Bay, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal 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 November 18, 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.Young@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: Sara Young, 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 in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

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 proposed IHA 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 request.

Summary of Request

On April 15, 2019, NMFS received a request from the City of Juneau for an IHA to take marine mammals incidental to construction activities at Statter Harbor in Auke Bay, Alaska. The application was deemed adequate and complete on September 26, 2019. The City of Juneau's request is for take of a small number of eight species of marine mammals, by Level B harassment and Level A harassment. Neither the City of Juneau nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to the City of Juneau for related work (84 FR 11066; March 25, 2019), which covers the first phase of activities (dredging, blasting, pile removal) and is effective from October 1, 2019 to September 30, 2020. The City of Juneau has not yet conducted any work under the previous IHA and therefore no monitoring results are available at the time of writing.

This proposed IHA would cover one year of a larger project for which the City of Juneau obtained one prior IHA. The larger multi-year project involves several harbor improvement projects including dismantling and demolition of existing docks, construction of a mechanically stabilized earth wall, and installation of concrete floats.

Description of Proposed Activity

Overview

The harbor improvements described in the application include installation of timber floats supported by 20 16-inch steel pipe piles, installation of a gangway, replacement of piles supporting a transient float, and removal of temporary fill that will be placed under the first IHA and construction of the permanent mechanically stabilized earth (MSE) wall.

Dates and Duration

The proposed activities are expected to occur between October 1, 2020 and May 1, 2021 but the IHA would be valid for one year to account for any delays in the construction timeline. In winter months, shorter 8-hour to 10-hour workdays in available daylight are anticipated. To be conservative, 12-hour work days were assumed for the purposes of analysis in this notice.

Specific Geographic Region

The proposed activities would occur at Statter Harbor in Auke Bay, Alaska which is in the southeast portion of the state. See Figure 3 in the application for detailed maps of the project area. Statter Harbor is located at the most northeasterly point of Auke Bay.

Detailed Description of Specific Activity

New infrastructure to be installed includes 9,136 square feet (848.8 square meters) of timber floats supported by twenty (20) 16-inch (4.1-decimeter) diameter steel pipe piles, an 10-foot by 100-foot gangway (3-meters by 30.5-meters), removal of the temporary surcharge fill and construction of the permanent MSE wall.

In addition to the new infrastructure, three existing piles will be repaired. A transient float was installed in Statter Harbor in 2018 as part of a different project and it is not operating as intended due to wave action and excessive movement of the float. Three temporary piles were installed without rock anchors as a temporary fix. During the proposed work, these piles will be removed with a crane or vibratory hammer and reinstalled with rock anchors to provide sufficient moorage capacity for the float.

Pile driving/removal will be conducted from a floating barge, utilizing a drill to install rock sockets and a vibratory hammer to install piles. Use of impact hammers is not anticipated, and will only be used for piles that encounter soils too dense to penetrate with the vibratory equipment. The floats will be unloaded from a barge and placed in the water. Piles will be driven as each float section is installed to hold the floats in place. Due to the substrate in the harbor, it is anticipated all of the piles will require drilling for rock anchors, referred to in this notice as down the hole drilling. The drilling would likely occur midway through vibratory installation of a pile and would occur on the same day the pile is being driven. A summary of the number and type of piles proposed to be driven is included in Table 1 below.

TABLE 1—PILE DRIVING AND REMOVAL SUMMARY

Activity	Number piles	Pile size/type	Method	Average piles/day [1] (Range)	Driving days	Strike/pile or minutes/pile	Estimated total daily duration
Pile Removal ...	3	16-inch (4.1-decimeter) Steel	Vibratory	3	1	30	12 hours/500 strikes.
Pile Installation	23	Pipe.	Vibratory	1.5 (1–3)	8–23	120	

TABLE 1—PILE DRIVING AND REMOVAL SUMMARY—Continued

Activity	Number piles	Pile size/type	Method	Average piles/day [1] (Range)	Driving days	Strike/pile or minutes/pile	Estimated total daily duration
			Impact	1 (0–2)		250	
			Drilling	1.5 (1–3)		240	

The temporary surcharge fill, placed during the previous IHA, would be excavated to elevation of the wall toe, approximately +3 feet (0.9 meters) MLLW or higher dependent on the location along the wall. The applicant will require the contractor to conduct all excavation work for temporary surcharge fill removal when the tide is below the work elevation, such that it will be completed in the dry. The wall would be constructed and then backfilled, reusing the temporary surcharge fill consisting of clean Class A shot rock originally used for the temporary blast pad in the previous IHA. Excavation and fill placement will be conducted such that work is done in the dry and not in the presence of marine mammals, thus excavation and fill placement are not discussed further in this notice.

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

Eight species of marine mammal have been documented in southeast Alaska waters in the vicinity of Statter Harbor. These species are: Harbor seal, harbor porpoise, Dall's porpoise, killer whale, humpback whale, minke whale, California sea lion, and Steller sea lion. Of these species, only three are known to occur in Statter Harbor regularly: Harbor seal, Steller sea lion, and humpback whale.

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 2 lists all species with expected potential for occurrence in Statter Harbor 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 (2018). 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 Region and Pacific Region SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019).

TABLE 2—SPECIES WITH THE POTENTIAL TO OCCUR IN STATTER HARBOR

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	Megaptera noveangliae	Central North Pacific	E, D,Y	10,103 (0.3, 7,891, 2006)	83	26
Minke whale	Balaenoptera acutorostrata	Alaska	-;N	N/A	Und	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	Orcinus orca	Northern Resident	-;N	261 (N/A, 261, 2011)	1.96	0
Killer whale	Orcinus orca	Gulf of Alaska transient	-;N	587 (N/A, 587, 2012)	5.87	1
Killer whale	Orcinus orca	West Coast Transient	-;N	243 (N/A, 243, 2009)	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	Phocoena phocoena	Southeast Alaska	-;Y	975 (0.14, 872, 2012)	8.7	34
Dall's porpoise	Phocoenoides dalli	Alaska	-;N	83,400 (0.097, N/A, 1991).	Und	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						

TABLE 2—SPECIES WITH THE POTENTIAL TO OCCUR IN STATTER HARBOR—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
California sea lion	*Zalophus califonrianus*	U.S.	-;N	257,606 (N/A, 233,515, 2014).	14,011	197
Steller sea lion	Eumetopias jubatus	Western DPS	E/D; Y	54,267 (N/A; 54,267, 2017).	326	252
Steller sea lion	Eumetopias jubatus	Eastern DPS	T/D; Y	41,638 (N/A, 41,638, 2015).	2,498	108
Family Phocidae (earless seals): Harbor seal	Phoca vitulina	Lynn Canal	-;N	9,478 (N/A, 8,605, 2011)	155	50

[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.

[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.

All species that could potentially occur in the proposed survey areas are included in Table 2. As described below, all eight species (with eleven managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

In addition, the sea otter (*Enhydra lutris*) may be found in southeast Alaska. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Humpback Whale

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge et al., 2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 2. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status).

Humpbacks that breed around the main Hawaiian Islands have been observed in summer feeding grounds throughout the North Pacific. The majority of the humpbacks found in Southeast Alaska and northern British Columbia have migrated from Hawaii for foraging opportunities and belong to the Hawaii Distinct Population Segment (DPS) (Bettridge *et al.,* 2015). Wade *et al.* (2016) estimated that 93.9 percent of the humpbacks encountered in Southeast Alaska and Northern British Columbia are from the Hawaii DPS, with the remaining percentage of humpbacks coming from the Mexico DPS.

While in their Alaskan feeding grounds, humpback whales prey on a variety of euphausiids and small schooling fishes including herring, smelt, capelin, sandlance, juvenile pollock, and salmon smolts (Kawamura 1980; Krieger and Wing 1986; Witteveen *et al.,* 2008; Straley *et al.,* 2017; Chenoweth *et al.,* 2017). Herring targeted by Southeast Alaska whales in Lynn Canal during 2007–2009 winters were lipid-rich, with energy content ranging from 7.3–10.0 kJ/gram (Vollenweider *et al.,* 2011). The local distribution of humpbacks in Southeast Alaska appears to be correlated with the density and seasonal availability of prey, particularly herring and euphausiids (Moran *et al.,* 2017). Important feeding areas include Glacier Bay and adjacent portions of Icy Strait, Stephens Passage/Frederick Sound, Seymour Canal, Lynn Canal, and Sitka Sound and these areas have been included in the designation of a Biologically Important Area for humpbacks in the Gulf of Alaska. During autumn and winter, the non-breeding season, humpbacks remaining in Southeast Alaska target areas where herring and eulachon are abundant, such as Seymour Canal, Berners Bay, Auke Bay, Lynn Canal, and Stephens Passage (Krieger and Wing 1986; Moran *et al.,* 2017). Over 2,940 and 2,019 humpback whale foraging-days were documented in Lynn Canal alone in 2007–2008 and 2008–2009 winter seasons, respectively (Moran *et al.,* 2017).

Fidelity to feeding grounds by individual humpbacks is well documented; interchange between Alaskan feeding grounds is rare (Witteveen and Wynne 2017). Long-term research and photo-identification efforts have documented individual humpbacks that have returned to the same feeding grounds for as many 45 years (Straley 2017; Witteveen and Wynne 2017; Gabriele *et al.,* 2017). Based on fluke pattern identification, Krieger, Baker and Wing identified 189 unique whales in the Juneau to Glacier Bay and Seymour Canal area (Krieger *et al.,* 1986). In recent years, 179 individual humpback whales were identified from the Juneau area, based upon fluke photographs taken between 2006 and 2014 (Teerlink 2017). Humpback whales occur in the project area intermittently year-round. Auke Bay and Statter Harbor are thought to have certain habitat features that attract humpback whales in recent years. The aggregation of herring in inner Auke Bay provide a habitat where whales may make energetic decisions to exploit small volumes of fish and rest to conserve energy between foraging opportunities.

Humpback whales utilize habitats in the project area intermittently. The breakwater and other dock structures appear to serve as fish-attracting devices, where forage fish (herring, capelin, sandlance, pollock, and juvenile salmon) aggregate and are targeted by diving humpback whales. Two humpback whales in recent years have also targeted a shallow trough off the east end of the Statter Harbor breakwater for deeper diving foraging excursions targeting herring and possibly juvenile pollock (Ridgway pers. observ.). Some individual whales enter

Auke Bay through the north Coghlan Island entrance and conduct a pattern of exploitation or ''browsing'' in the bay and inner harbor. In this area some whales lunge feed and gulp massive volumes of feed in seawater immediately adjacent to or rubbing against boats, docks and other structures in deep to shallow waters throughout the action area. These whales have been observed continuing a pattern search alongshore to Auke Creek and up Fritz Cove, where they have been seen lunge feeding in small coves and gullies in shallow water to aggregate schooling fish.

Because humpback whale individuals of different DPS origin are indistinguishable from one another in Alaska (unless fluke patterns are linked to the individual in both feeding and breeding ground), the frequency of occurrence of animals by DPS is only estimated using the DPS ratio, based upon the assumption that the ratio is consistent throughout the Southeast Alaska region (Wade *et al.,* 2016).

Minke Whale

Minke whales are widely distributed throughout the northern hemisphere and are found in both the Pacific and Atlantic oceans. Minke whales in Alaska are considered migratory and during summer months are typically found in the Arctic and during winter months are found near the equator (NMFS 2019a).

Little is known about minke whale breeding areas, although it is believed they calve in the winter months. Minke whales feed by side-lunging through schools of prey and are opportunistic predators feeding on a variety of crustaceans, plankton, and small school fish (NMFS 2019a).

There is no quantifiable information on abundance or seasonality in Auke Bay or the surrounding area.

Killer Whale

NMFS considers three stocks of killer whales to occur in southeast Alaskan waters, which may occur separately or concurrently within the project area. These stocks are the Eastern North Pacific/Alaska Resident stock (2,347 individuals), Eastern North Pacific/Northern Resident stock (261 individuals), the West Coast Transient stock (243 individuals) (Muto *et al.,* 2018). These stocks represent two of the three ecotypes of killer whales occurring within the North Pacific Ocean—resident (forages on fish) and transient (forages primarily on marine mammals). However, NMFS is evaluating new genetic information that will likely result in a revision of the above stock structure (Muto *et al.,* 2018).

The species has the most varied diet of all cetaceans; however, the transient populations typically hunt marine mammals while the resident populations feed on fish, particularly salmon and Atka mackerel (Barrett-Lennard *et al.,* 2011; Parsons *et al.,* 2013). Residents often travel in much larger and closer groups than transients and have been observed sharing fish they catch. Transient killer whales feed on other marine mammals including Steller sea lions, harbor seals, and various species of cetaceans. They are also more likely to rely on stealth, making less frequent and less conspicuous calls and skirting ''along shorelines and around headlands'' in order to hunt their prey in highly coordinated attacks (Barrett-Lennard *et al.,* 2011).

The best available data for Auke Bay comes from a compilation of public sightings recorded by Oceanus Alaska. This compilation is believed to be comprehensive as Juneau residents often report killer whale sightings. Killer whales are have been observed during all months, however less frequently in winter months. From 2010–2017 an average of 25 killer whale sightings were recorded in the project area per year (Ridgeway unpubl. data 2017). Data did not make distinctions between the stocks and thus the ratio between stocks is unknown. However, the AG resident pod is one pod known to frequent the Juneau area (Dahlheim *et al.,* 2009; personal observation) and has 41 members recorded in the North Gulf Oceanic Society's Identification Guide (NGOS 2019). This pod is seen in the area intermittently in groups of up to approximately 25 individuals (personal observation), consistent with the data for the area. Transient killer whales have been observed in nearby waterways as well and one group of 14 individuals were observed during surveys (Dahlheim *et al.,* 2009).

Harbor Porpoise

In Alaska, harbor porpoises are currently divided into three stocks, based primarily on geography: (1) The Southeast Alaska stock—occurring from the northern border of British Columbia to Cape Suckling, Alaska, (2) the Gulf of Alaska stock—occurring from Cape Suckling to Unimak Pass, and (3) the Bering Sea stock—occurring throughout the Aleutian Islands and all waters north of Unimak Pass. Only the Southeast Alaska stock is considered in this proposed IHA because the other stocks are not found in the geographic area under consideration.

There are no subsistence uses of this species; however, as noted above, entanglement in fishing gear contributes to human-caused mortality and serious injury. Muto *et al.* (2018) also reports harbor porpoise are vulnerable to physical modifications of nearshore habitats resulting from urban and industrial development (including waste management and nonpoint source runoff) and activities such as construction of docks and other over-water structures, filling of shallow areas, dredging, and noise (Linnenschmidt *et al.,* 2013).

Information on harbor porpoise abundance and distribution in Auke Bay has not been systematically collected. While sightings of harbor porpoise in Statter Harbor are rare, they are an inconspicuous species, often traveling alone or in pairs, difficult for marine mammal observers to sight, making any approach to a monitoring zone potentially difficult to detect. The applicant did not request authorization of take of harbor porpoise because they are not known to regularly occur in the vicinity of the project site. However, because the species has been rarely observed in the area and due to the difficulty of implementing mitigation sufficient to avoid incidental take of animals that do occur in the area, we have determined it appropriate to propose authorization of take of harbor porpoise.

Dall's Porpoise

Only one stock of Dall's porpoise is currently recognized in Alaskan waters—the Alaska stock—with an estimated abundance of 83,400, although this estimate is outdated (Muto *et al.,* 2019). While the Dall's porpoise is generally considered abundant, there is insufficient data on population trends to determine whether the population is stable, increasing or decreasing (NMFS 2019b).

Dall's porpoises are widely distributed in the North Pacific Ocean, usually in deep oceanic waters (>600 ft/183 m), over the continental shelf or along slopes (NMFS 2019b, Muto *et al.,* 2019). They can be found along the west coast of the United States ranging from California to the Bering Sea in Alaska (NMFS 2019b). There is little data regarding Dall's porpoise presence in the project area. Dall's porpoise are sighted frequently in southeast Alaska during the summer months but Dall's porpoise occurrence is thought to be low compared to summer occurrence in the Lynn Canal or Stephens Passage area (Jefferson *et al.,* 2019). Systematic surveys of Dall's porpoise abundance and distribution have not been

conducted in Auke Bay specifically, however from 2001–2007 surveys of cetaceans in Southeast Alaska were conducted during the spring, summer and fall. In-water work will occur from fall into late spring. Dall's porpoise were observed in nearby waterways including Stephen's Passage and Lynn Canal (Dalheim *et al.,* 2009) and while the species is generally in water depths of 600 feet (113 meters) or greater they may also occur in shallower waters, (Moran *et al.,* 2018). Dall's porpoises have been observed to have strong seasonal patterns with the highest number being observed in the spring and the fewest in the fall (Dahlheim *et al.,* 2009). Should Dall's porpoise be present within the project area it is most likely to be during the spring months based on the strong seasonal patterns observed.

California Sea Lion

The U.S. stock of California sea lions have a wide range, typically from the border of the United States and Mexico (NMFS 2019c). During the winter males commonly migrate to feeding grounds off California, Oregon, Washington, British Columbia and recently Southeast Alaska. There is an active unusual mortality event declared for the U.S. stock of California sea lions but this is mostly limited to southern California. Females and pups on the other hand stay close to breeding colonies until the pups have weened. The furthest north females have been observed is off the coast of Washington and Oregon during warm water years (NMFS 2019c). While California sea lions aren't common in Alaska, one was present on the docks in Statter Harbor in 2017 (NOAA 2017).

California sea lions feed primarily offshore in coastal waters. They are opportunistic predators and eat a variety of prey including squid, anchovies, mackerel, rockfish and sardines (NMFS 2019c). California sea lion breeding areas are mostly in southern California and are not expected to spatially overlap with the project area.

Steller Sea Lion

The Steller sea lion was listed as a threatened species under the ESA in 1990 following declines of 63 percent on certain rookeries since 1985 and declines of 82 percent since 1960 (55 FR 12645; April 5, 1990). In 1997, two DPSs of Steller sea lion were identified based on differences in genetics, distribution, phenotypic traits, and population trends: The Western DPS and Eastern DPS (Fritz *et al.,* 2013).

The Eastern DPS (eDPS) is commonly found in the project area waters and were most recently surveyed in Southeast Alaska in June–July of 2015. The current population estimate for the eDPS is 71,562 individuals of which 52,139 are non-pups and 19,423 are pups. In Southeast Alaska the estimated total abundance is 28,594 individuals of which 20,756 are non-pups and 7,838 are pups. The eDPS has been increasing between 1990 to 2015 with an estimated annual increase of 4.76 percent for pups and 2.84 percent for non-pups. (Muto *et al.,* 2018) The Western DPS (wDPS) is found infrequently in the project area waters, but have been sighted previously. The current abundance estimate for the US portion of the wDPS is 50,983 of which 12,492 were pups and 38,491 were non-pups. This is the minimum estimate for only the US portion of the wDPS. It is the minimum count because the counts were not corrected for animals at sea during the survey. The overall trend for the wDPS in Alaska is an annual increase of 1.94 percent for non-pups and 1.87 percent for pups. (Muto *et al.,* 2018)

There is no critical habitat designated for Steller sea lions within the action area. The action area is located approximately 12 nautical miles (22.22 kilometers) from around Benjamin Island, well outside of the 3,000-ft (914.4-m) designated critical habitat boundary designation.

Steller sea lions occur in Auke Bay in winter on an intermittent basis, but their genetic and stock-designation identities are rarely known: Individuals are indistinguishable unless sea lions are branded (and the brand is observed). Satellite-tagged individual animals from the Benjamin Island haulout and Auke Bay were observed multiple times between November 2010 and January 2011 (Fadely 2011), and the Auke Bay boating community frequently observes Steller sea lions moving to and from the haulout complex into Auke Bay.

From 2013–2017, Steller sea lions have been documented in Auke Bay travelling as individuals or in herds of 50 to an estimated 120+ animals, during every month of the winter season. During winter 2015–2016, Steller sea lions foraged aggressively on young herring and 1–2-year-old Walleye pollock for over 20 days, continuously. Some sea lions were also observed consuming small flatfish, likely yellowfin sole, harvested from the seafloor (depth 25–45 m), during this period. While no sea lions were observed hauled out on beaches or structures in the harbor, large rafts of 20–50 animals formed and rested in the outer harbor area between foraging bouts. Simultaneous surface counts of 121 individual sea lions suggests that likely upwards of 200 animals or more were targeting prey in Statter Harbor during herring aggregation events. These 121 to 200 animals comprise roughly 20 to 30 percent of the animals typically found at the Benjamin Island and Little Island haulout complexes during winter months. (Ridgway pers. observ.)

Only three individual, branded wDPS Steller sea lions have been observed at Benjamin Island, the closest haulout, from 2003–2006 with a maximum of 3 sightings per individual. No branded wDPS individuals have been observed in the ADF&G surveys from 2007–2016. The 2007 ADF&G surveys offer the most abundant data for Steller sea lion counts at Benjamin Island. A total of 11 surveys were conducted between January and July 2017, ranging from 0–768 Steller sea lions, with an average count of 404 individuals. In 2007 no wDPS animals were observed. While it is possible an individual from the wDPS may be at the Benjamin Island haulout, it is rare, and none have been documented at this haulout for the last decade (Jemison pers. comm. 2017).

Although recent data in the northern part of the eastern DPS indicate movement of western sea lions east of the 144° line, the mixed part of the range remains small (Jemison *et al.,* 2013). Based on observations by ADF&G over the last decade this project is unlikely to impact wDPS individuals. An updated paper by Hastings *et al.* (in press) estimates that in the area surrounding Auke Bay, it is appropriate to assume a maximum of 18 percent of the sighted animals would be from the listed Western DPS.

Harbor Seal

The Lynn Canal/Stephens Passage stock is found in the project area waters. The current population estimate for the Lynn Canal/Stephens Passage stock is 9,478 individuals, and the 5-year trend estimate is −176. The probability of decrease of this stock is 0.71, indicating that evidence suggests that the stock is declining, however 9 of the 12 Alaska harbor seal stocks are showing a trend of increasing populations (Muto *et al.,* 2018). Typically harbor seals will stay within 16 miles (25 km) of shore, but they have been found up to 62 miles (100 km) from the shore (Klinkhart *et al.,* 2008). Harbor seal movement is highly variable, with no seasonal patterns identified.

Harbor seals use a variety of terrestrial sites to haul out for resting (year-round), pupping (May–July), and molting (August–September) including tidal and intertidal reefs, beaches, sand bars, and glacial/sea ice (Sease 1992; Klinkhart *et al.,* 2008). Some sites have traditional/historic value for pupping and molting while others are used as temporary

resting sites during seasonal foraging trips.

Harbor seals are residents of the project area and observed within the harbor on a regular basis and can be found within the immediate project vicinity on a daily basis. Over the last three winters, a group of up to 12 harbor seals has been observed in inner Statter Harbor near the harbormaster building along with 1–2 dispersed seals near the Auke Creek shoreline (Kate Wynne pers. observ.). Additionally, other counts from 2014–2016 recorded 2–16 animals within Statter Harbor. Up to 52 individual seals have been photographed simultaneously hauled out on the nearby dock at Fishermen's Bend, located in the northwest corner of Statter harbor (Ridgway unpubl. Data). It is assumed that the majority of animals that haul out on the nearby floats at Fishermen's Bend are likely to go under water and resurface throughout the duration of the project. However, further clarification on the number of individual seals likely to occur in the project area is difficult as harbor seals are not easily identifiable at an individual level.

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. 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 3.

TABLE 3—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 (five cetacean and three pinniped (two otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as mid-frequency cetaceans (killer whale), and two are classified as high-frequency cetaceans (harbor and Dall's porpoise).

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 (ANSI 1994). 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 vibratory pile driving and removal, coupled with down the hole drilling, and potential impact pile driving. 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 raid 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 would be conducted using a down-the-hole drill inserted through the hollow steel piles. A down-the-hole drill is a drill bit that drills through the bedrock using a pulse mechanism that functions at the bottom of the hole. This pulsing bit 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 pulsing sounds produced by the down-the-hole drilling method are continuous, however 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 (R&M 2016).

The likely or possible impacts of the City of Juneau'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 Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and down the hole drilling is the primary means by which marine mammals may be harassed from the City of Juneau'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). 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 (2016), 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 vibratory pile driving and down the hole drilling, as well as potential impact pile driving. 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 action 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 haulout 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, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving and down-hole drilling) at the Kodiak Ferry Dock (80 FR 60636; October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). 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-the-hole drilling projects in Alaska have observed similar behaviors (for example, the Biorka Island Dock Replacement Project).

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. Statter Harbor hosts numerous recreational and commercial vessels; therefore, background sound levels in the harbor are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and down-the-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 City of Juneau's construction activities in Statter Harbor 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).

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. These sounds would not be detectable at the nearest known Steller sea lion haulouts, and all known harbor seal haulouts are well beyond the maximum distance of predicted in-air acoustical disturbance.

In-water pile driving, pile removal, and drilling activities would also cause short-term effects on water quality due to increased turbidity. Dispersal of suspended sediments produced by project activities could vary from moderate to rapid rates depending on tidal stage at the time of the activities. The City of Juneau would employ standard construction best management practices (see section 10 in application), thereby reducing any impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in neighboring Fritz Cove or Favorite Channel (*e.g.,* most of the impacted area is limited to the northern and eastern portions of Auke Bay) and does not include any BIAs, ESA-designated critical habitat, or any other areas of known significance. Pile installation/removal and drilling may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. The City of Juneau must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. 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 any pinnipeds would be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. 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 of the other channels and bays immediately adjacent to Auke Bay.

The duration of the construction activities is relatively short. The construction window is for a maximum of 23 days and during each day, construction activities would occur for a maximum of 12 hours. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

In-Water Construction Effects on Potential Prey

Construction activities would produce continuous (*i.e.,* vibratory pile driving and down-the-hole drilling) and pulsed (*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. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid outmigratory routes in the project area. Both herring and salmon form a significant prey base for Steller sea lions, herring is a primary prey species of humpback whales, and both herring and salmon are components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish and salmon are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in Auke Bay are routinely exposed to substantial levels of suspended sediment from ongoing construction in the harbor.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, 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. 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 this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, 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 acoustic sources (*i.e.,* pile driving, removal, down the hole drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetacean species and phocid pinnipeds because predicted auditory injury zones are larger than for mid-frequency species or otariid pinnipeds and they are known to frequent the harbor close to the docks where the construction would occur. Auditory injury is unlikely to occur for low or mid-frequency species. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

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). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (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) 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.

The City of Juneau's proposed activity includes the use of continuous

(vibratory pile driving/removal and down the hole drilling) and impulsive (impact pile driving) sources, and therefore 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). The City of Juneau's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal and down the hole drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance*.

TABLE 4—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 and removal and down-the-hole drilling).

In order to calculate distances to the Level A and Level B harassment thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations. Note that piles of differing sizes have different sound source levels. It is anticipated all of the piles will require drilling for rock anchors and will be installed at the rate of a single pile per day.

Vibratory removal—The closest known measurements of vibratory pile removal similar to this project are from the Kake Ferry Terminal project for vibratory extraction of an 18-inch steel pile. The extraction of 18-inch steel pipe piles using a vibratory hammer resulted in underwater noise levels reaching 152.4 dBRMS at 55.8 feet (17 meters) (Denes *et al.,* 2016). The pile diameters for the proposed project are smaller, thus the use of noise levels associated with the pile extraction at Kake are conservative.

Down the hole drilling—Little source level data are available for down-the-hole drilling. Denes *et al.* (2016) measured sound emanating from the drilling of 24-in (61-cm) piles at Kodiak and calculated a median SPL of 166.3 dB (at 10 m) which was used to calculate the PTS onset isopleths. Denes *et al.* (2016) also noted a transmission loss coefficient of 18.9 for drilling suggesting high attenuation when drilling below the seafloor. As the activity proposed will not occur in the same location as the Denes *et al.* measurements, NMFS is using a transmission loss coefficient of 15 in this proposed notice.

Vibratory driving—The closest known measurements of sound levels for vibratory pile installation of 16-inch (41-cm) steel piles are from the U.S. Navy Proxy Sound Source Study for projects in Puget Sound. Based on the projects analyzed it was determined that 16- to 24-inch (41- to 61-cm) piles exhibited similar sound source levels for projects in Puget Sound resulting in a recommended source level of 161 dB RMS at 33 feet (10 m) for piles diameters ranging from 16- to 24-inches (41- to 61-cm) (U.S. Navy 2015). However, as each pile that will be driven through vibratory driving will also utilize down the hole drilling, within the same day, the ensonified area for the down the hole drilling, which is larger and potentially a more conservative estimate, was used.

Impact driving—For impact pile driving of 16-inch (41-cm) piles, sound measurements were used from the literature review in Appendix H of the AKDOT&PF study (Yurk *et al.,* 2015) for 24-inch (61-cm) piles driven in the Columbia River with a diesel impact hammer. To estimate the sound source levels of 16-inch (41-cm) piles data for the 24-inch (61-cm) piles were used as the available data for 16-inch piles did not report a peak level, thus these noise levels used in this notice are likely overestimating the acoustic isopleths.

When the NMFS Technical Guidance (2018) 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 Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, such as the pile driving/removal and down the hole drilling proposed for this project, the NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 5—NMFS USER SPREADSHEET INPUTS

	Vibratory driving	Vibratory removal	Down the hole drilling		Impact driving
Spreadsheet Tab Used.	A. (1) Non-impulsive, continuous.	A. (1) Non-impulsive, continuous.	A. (1) Non-impulsive, continuous.	Spreadsheet Tab Used.	E. (1) Impulsive, intermittent.
Source Level (RMS SPL).	161	152.4	166.3	Source level (Single shot SEL).	175.
Weighting Factor Adjustment (kHz).	2.5	2.5	2.5	Weighting Factor Adjustment (kHz).	2.
Number of piles in 24 hours.	2	2	1	Number of strikes per pile.	500.
Activity Duration (min) to drive 1 pile.	360	360	720	Number of piles per day.	1.
Propagation (xLogR)	15	15	15	Propagation (xLogR)	15.
Distance of source level measurement (meters).	10	17	10	Distance of source level measurement (meters).	10.
Other factors if using different tab for other source.				Source level (PK SPL).	205.
				Distance of source level measurement (meters).	10.

TABLE 6—NMFS USER SPREADSHEET OUTPUTS

	PTS isopleth (meters)				
Source type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Vibratory driving	35.8	3.2	52.9	21.8	1.5
Vibratory removal	16.3	1.4	24.0	9.9	0.7
Down the hole drilling.	79.5	7.0	117.6	48.3	3.4
Impact driving (SEL/PK).	184.2/1.2	6.6/NA	219.5/15.8	98.6/1.4	7.2/NA
	Level B behavioral harassment isopleth (m)				
Vibratory driving	5,411.7				
Vibratory removal	2,457.2				
Down the hole drilling.	12,022.64				
Impact driving	1,000				

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Reliable densities are not available for Statter Harbor or the Auke Bay area. Generalized densities for the North Pacific are not applicable given the high variability in occurrence and density at specific inlets and harbors. Therefore, the applicant consulted opportunistic sightings data from oceanographic surveys in Auke Bay and sightings from Auke Bay Marine Station observation pier for Statter Harbor to arrive at a number of animals expected to occur within the harbor per day. For humpback whales, it is assumed that a maximum of four animals per day are likely to occur in the harbor. For Steller sea lions, the potential maximum daily occurrence of animals is 121 individuals within the harbor. For harbor seals, the maximum daily occurrence of animals is 52 individuals. For Dall's porpoises, it was assumed a large pod (20 individuals) might occur in the project area once per month in the spring months of March, April, and May. For harbor porpoises, it was assumed that up to one pair may enter the project area daily. For killer whales, it was conservatively assumed that up to one pod of resident killer whales (41 individuals) and one pod of transient killer whales (14 killer whales) might enter Auke Bay over the course of the project. It was assumed that one minke

whale might enter the bay per month across the eight months when work could potentially be conducted. Take of California sea lions have been requested on a precautionary basis and it is assumed no more than one sea lion per day of in-water work would enter Auke Bay.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Because reliable densities are not available, the applicant requests take based on the above mentioned maximum number of animals that may occur in the harbor per day multiplied by the number of days of the activity. For species occurring less frequently in the area, some take estimates were calculated based on potential monthly occurrence. The applicant varied these calculations based on certain factors.

Humpback whales—Because humpback whale individuals of different DPS (natal) origin are indistinguishable from one another (unless fluke patterns are linked to the individual in both feeding and breeding ground), the frequency of occurrence of animals by DPS is only estimated using the DPS ratio, based upon the assumption that the ratio is consistent throughout the Southeast Alaska region (Wade *et al.,* 2016). Work is expected to occur over 23 days and will involve a mixture of vibratory pile driving and drilling each day. Based on the available information and the extent of the Level B harassment zone it is estimated up to 4 humpback whales could be exposed to elevated noise during each day of pile driving and drilling. Using a daily potential maximum rate of four humpback whales per day, the project could take up to 92 humpback whales. Based on the allocation by DPS expected in the project area, it is assumed 6.1 percent of the humpbacks sighted would be from the ESA-listed Mexico DPS, or a potential 6 takes. No Level A harassment takes are requested for humpback whales as the Level A harassment zones are small and shutdown measures can be implemented prior to any humpback whales enter Level A harassment zones.

Steller sea lions—Using a potential daily maximum rate, the project could take up to 121 Steller sea lions each day of pile driving activities due to the large Level B harassment zones. The maximum daily count of 121 was used to make this determination as Steller sea lions have been observed in large herds within vicinity of the harbor in excess of seven days when prey is abundant and the Level B harassment zones are large and in relatively close proximity to Benjamin Island (~22 km from project site). Thus, during these times it is likely that the rate of taking would be higher as the animals will be counted more than once if they dive and/or leave and re-enter the monitoring zone. On other days when dense groups are not present, fewer takes will be encountered, and it is assumed the overall take levels will even out. While there are a small number of resident harbor seals, it is anticipated there will be larger numbers of Steller sea lion takes, due to the large herds they have been observed in, the large size of the Level B harassment zones (up to 12.1 km) and the relative proximity to an established haulout at Benjamin Island. While the Level B harassment zones for the first phase of construction were generally smaller, much of the larger zones in this second phase are truncated due to land masses. Further, take numbers are estimated based on the largest group observed rafting in the Auke Bay vicinity and thus is considered an appropriate estimate for this phase as well.

Assuming 121 Steller sea lion takes per day, the total requested number of Steller sea lion takes for 23 days of work is 2,783 Steller sea lions. Based on the recently published literature ascribing sighted Steller sea lions in the zone of mixing to an allocated DPS, it is assumed 18 percent of the total takes, or 501 individuals, would be from the ESA-listed Western DPS. No Level A harassment takes are requested for Steller sea lions as the Level A harassment zones are small and shutdown measures can be implemented prior to Steller sea lions entering any Level A harassment zone.

Harbor seals—Up to 52 individual seals have been photographed simultaneously hauled out on the nearby dock at Fishermen's Bend (Ridgway unpubl. data). Direct effects of construction noise in this area will be partially blocked by the recently constructed Phase II boat launch and parking area. We assume that the majority of animals that haul out on the nearby floats at Fishermen's Bend are likely to go under water and resurface throughout the duration of the project. The action area also extends into Stephens Passage near the location of a known harbor seal haulout near Horse Island. Abundance estimates within this area are 276.5 harbor seals (NOAA 2018). However, only a small portion of this survey unit is located within the project area and thus it is estimated that 25 percent (70 harbor seals) may also be located within the action area each day. With both areas combined it is estimated up to 121 harbor seals (52 + 70) may be exposed to elevated sound levels during each day of drilling, resulting in a total of 2,806 harbor seal takes by Level B harassment during the activity.

Due to the number of harbor seals commonly within the Level A harassment zones for impact pile driving and drilling, there is a chance the injury zone will not be free of harbor seals for sufficient time to allow for impact driving as harbor seals frequently use the nearby habitat. It is assumed that no more than 11 seals are likely to be found within the inner harbor, which will be used as the maximum of harbor seals that may be taken by Level A harassment for each day of the project. This results in a total estimate of 253 Level A harassment takes of harbor seals.

Dall's porpoise—Dall's porpoises have been observed to have strong seasonal patterns with the highest number being observed in the spring and the fewest in the fall (Dahlheim *et al.,* 2009). Group size in Alaska typically ranging from 10 to 20 individuals (Wells 2008). Should Dall's porpoise be present within the project area it is most likely to be during the spring months based on the strong seasonal patterns observed. The project is located in habitat that is not typical for Dall's porpoise, however they may still be present during the spring months of March, April and May. It is assumed that a large pod of 20 Dall's porpoises (Wells 2008) may enter the harassment zones once each of these months, resulting in a take estimate of 60 Level B harassment takes of Dall's porpoise.

Dall's porpoises can generally be observed by monitors due to the ''rooster tail'' splash often made when surfacing (Wells 2008). However, due to the size of the Level A harassment zone associated with drilling (120 meters) and impact driving (220 meters), and due to the possibility for night work, it is possible Dall's porpoises may enter and remain in the Level A harassment zone undetected. It is conservatively assumed that one pair of Dall's porpoises may enter the Level A harassment zone and remain undetected every fourth day of pile driving, resulting in a take estimate of 12 Level A takes of Dall's porpoise across during the activity.

Harbor porpoise—There is little data regarding harbor porpoise presence in the project area, however they have been observed in the project vicinity during several surveys of nearby waterways including Lynn Canal and Stephens Passage (Dahlheim *et al.,* 2009; Dahlheim *et al.,* 2015). The

average group size ranged from 1.24 to 1.57 throughout the study years, consistent with our estimate that one pair per day may be present in the Auke Bay Area. Based on the available information is estimated that up to one pair of harbor porpoises may be taken by Level B harassment during each of the 23 days of pile driving, resulting in a total estimated 46 takes by Level B harassment.

Harbor porpoises are stealthy, having no visible blow and a low profile in the water making the species difficult for monitors to detect (Dahlheim *et al.,* 2015). The Level A harassment zones extend up to 220 meters, because of this distance it is possible harbor porpoises may enter the Level A harassment zone undetected. It is conservatively assumed that one pair of harbor porpoises may enter the Level A harassment zone every other day of pile driving, resulting in a total estimated take of 24 harbor porpoises by Level A harassment.

Killer whale—From 2010–2017 an average of 25 killer whale sightings were recorded in the project area per year (Ridgeway unpubl. data 2017). Data did not make distinctions between the stocks and thus the ratio between stocks is unknown. However, a resident pod identified as the AG pod is known to frequent the Juneau area (Dahlheim *et al.,* 2009; personal observation) and has 41 members recorded in the North Gulf Oceanic Society's Identification Guide (NGOS 2019). This pod is seen in the area intermittently in groups of up to approximately 25 individuals (personal observation), consistent with the data for the area. Transient killer whales have been observed in nearby waterways as well and one group of 14 individuals were observed during surveys (Dahlheim *et al.,* 2009). Killer whales move fast and have large ranges, and while they may occasionally enter the Level B harassment zones they are unlikely to linger in the area. Based on the information available it is conservatively estimated that one pod of residents (41 individuals) and one pod of transients (14 individuals) may be taken during the duration of the project. As killer whales may not be able to be readily distinguished between resident and transients, or the applicable stock populations, a total of 55 takes of killer whales are requested. Based on the intermittent occurrence of killer whales from various stocks, if killer whales appear in Auke Bay during construction activities, it would be difficult to estimate what proportion of observed killer whales would be from each potential stock. Therefore, for the purposes of this analysis, we assume the total amount of estimated take of killer whales could be entirely from each of the three stocks in the area and have made our findings assuming the total amount of authorized take could be entirely from each of the three stocks. No Level A takes are requested for killer whales due to the small size of the Level A harassment zones and the conspicuous nature of killer whales that should allow for effective implementation of shutdowns before killer whales could incur PTS.

Minke whale—There are no known occurrences of minke whales within the action area, however since their ranges extend into the project area and they have been observed in southeast Alaska (Dahlheim *et al.,* 2009) it is possible the species could occur near the project area given the large harassment zones associated with drilling. Therefore, one take is being requested per month of the potential project window (October 2020 through May 2021) for a total of 8 estimated takes of minke whale by Level B harassment. Due to the unlikely occurrence of minke whales in the general area and the additional unlikely of a minke whale occurring within 200 meters of the construction activity, no Level A takes of minke whales is proposed.

California sea lion—California sea lions are not typically found in the project area, however one hauled out on Statter Harbor boat launch ramp float in September of 2017. For take purposes it is estimated that one California sea lion may be present each day of in-water work, resulting in a total of 23 estimated takes by Level B harassment. Due to the rarity of California sea lions in the area, no Level A harassment take is proposed.

The total number of takes proposed to be authorized are summarized in Table 7 below.

TABLE 7—TAKES PROPOSED TO BE AUTHORIZED BY LEVEL A AND LEVEL B HARASSMENT

	Total proposed Level B harassment takes	Total proposed Level A harassment takes	Total takes proposed to be authorized
Humpback whale	92	0	92
Steller sea lion eDPS	2,282	0	2,282
Steller sea lion wDPS	501	0	501
Harbor seal	2,806	253	3,059
Dall's porpoise	60	12	72
Harbor porpoise	46	24	70
Killer whale, Northern Resident, Gulf of Alaska Transient, West Coast Transient	55	0	55
Minke whale	8	0	8
California sea lion	23	0	23

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 (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or

stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, the City of Juneau will 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 (*e.g.,* standard barges, *etc.*), 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;
- Work may not begin during nighttime hours, or during periods of low visibility when visual monitoring of marine mammals can be conducted. However, work can continue into the nighttime hours if necessary;
- For those marine mammals for which Level B harassment has not been authorized, in-water pile installation/removal and drilling will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If take 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.

The following measures will apply to the City of Juneau's mitigation requirements:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving/removal and drilling activities, the City of Juneau will establish a shutdown zone, as described in Table 8 below. The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). The placement of Protected Species Observers (PSOs) during all pile driving and drilling activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure marine mammals in the shutdown zones are visible.

TABLE 8—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

Source	Shutdown zones (m)					Monitoring zones (m)
	Low frequency cetacean	Mid-frequency cetacean	High frequency ceteacean	Phocid	Otariid	All species
Vibratory Removal	20	10	25	10	10	2,500
Vibratory Installation/Drilling	80	10	120	50	10	2,500
Impact Driving	185	10	220	100	10	1,000

Establishment of Monitoring Zones for Level B Harassment—The City of Juneau will establish monitoring zones to correlate when possible with 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 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 monitoring zones are described in Table 8 above. If visibility is such that observers are able to make observations beyond the monitoring zone distance, these observations will be recorded and reported. The Level B harassment zone for vibratory pile installation and down the hole drilling is so large that a smaller and more feasible zone will be implemented as monitoring zones. Should PSOs determine the monitoring zone cannot be effectively observed in its entirety, Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B harassment zone that was not visible.

Soft Start—The use of soft-start procedures 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 energy, with each strike followed by a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs 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 monitoring zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the monitoring zone. When a marine mammal permitted for Level B harassment take is present in the monitoring zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than

30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone will commence.

Due to the depth of the water column and strong currents present at the project site, bubble curtains will not be implemented as they would not be effective in this environment.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved PSOs per the Marine Mammal Monitoring Plan provided in Appendix B of the City of Juneau's application. Trained observers shall be placed from the best vantage points practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring will 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/removal and drilling 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 30 minutes.

A minimum of two PSOs will be based strategically with one PSO on land at the Statter Harbor project site and the other on land or potentially on a vessel partway into Auke Bay. These stations will allow full monitoring of the impact hammer monitoring zone and the Level A shutdown zones. Potential locations for the second observer are described on pages 5 and 6 in Appendix B of the City of Juneau's application.

PSOs will scan the waters using binoculars, and/or spotting scopes, and will use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs will 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. The City of Juneau will adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required;

(ii) At least one observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and

(iv) The City of Juneau shall submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates 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; and
- 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.

The City of Juneau will submit a marine mammal monitoring report. A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal and drilling activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report 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; and
• Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report 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 IHA (if issued), such as an injury, serious injury or mortality, the City of Juneau will 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 will 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 may not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the City of Juneau to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of Juneau will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City of Juneau 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), City of Juneau will 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 will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with City of Juneau to determine whether modifications in the activities are appropriate.

In the event that City of Juneau discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), City of Juneau will 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. City of Juneau will provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving/removal and drilling activities associated with the Statter Harbor construction project as outlined previously, have the potential to disturb or displace marine mammals in Auke Bay. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal and down-the-hole drilling. Potential takes could occur if individuals of these species are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment will be due to potential behavioral disturbance, TTS, and PTS (for select species). No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Level A harassment is only anticipated for Dall's porpoise, harbor porpoise, and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

As described previously, killer whales, minke whales, and California sea lions are considered rare in the project area and we authorize only nominal and precautionary take of these species. Therefore, we do not expect meaningful impacts to these species and find that the total killer whale, minke whale, and California sea lion take from each of the specified activities will have a negligible impact on this species.

For remaining species, we discuss the likely effects of the specified activities in greater detail. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; Lerma 2014; ABR 2016). Most likely, individuals will move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in southeast Alaska, which

have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to avoid the area while the activity is occurring. While vibratory driving and drilling associated with the planned project may produce sound at distances of many kilometers from the project site, thus intruding on some habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Therefore, we expect that animals annoyed by project sound would avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor porpoises, Dall's porpoises, and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving. If hearing impairment occurs, it is most likely that the affected animal would lose only a small number of decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The Level A harassment exposures are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment are likely to consist of temporary modifications in behavior that are not anticipated to result in fitness impacts to individuals;
- The specified activity and ensonification area is very small relative to the overall habitat ranges of all species; and
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

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 the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under 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 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 7 demonstrates the number of animals that could be exposed to received noise levels that could cause Level A harassment and Level B harassment for the planned activities in the Statter Harbor project area. Our analysis shows that less than one third of the population abundance of each affected stock could be taken by harassment. The numbers of animals anticipated to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Calculated takes do not assume multiple harassments of the same individual(s), resulting in larger estimates of take as a percentage of stock abundance than are likely given resident individuals. This is the case with the resident harbor seals (Lynn Canal/Stephens Passage stock) as it is documented that the same small group of individuals frequent the Statter Harbor area.

As reported, a small number of harbor seals, most of which reside in Statter Harbor year-round, will be exposed to construction activities for 23 days. The total population estimate in the Lynn Canal/Stephens Passage stock is 9,478 animals over 1.37 million acres (5,500 km^2) of area in their range. The great majority of these exposures will be to the same animals given their residency patterns, however the number of repeat exposures is difficult to quantify due to the lack of visible markings on harbor seals in water. No more than 121 harbor seals have ever been sighted in the project area and the harbor seals are known to be resident. Therefore, it is unlikely that the harbor seals entering the area on each of the 23 days of construction activity are unique individuals and are rather repeated takes of the same small number of individuals.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact 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.

The proposed project is not known to occur in an important subsistence hunting area. Auke Bay is a developed area with regular marine vessel traffic. Of the marine mammals considered in this IHA application, only harbor seals are known to be used for subsistence in the project area. In a previous consultation with ADF&G, the Douglas Indian Association, Sealaska Heritage Institute, and the Central Council of the Tlingit and Haida Indian Tribes of Alaska on other construction activities in Statter Harbor, representatives indicated that the primary concern with construction activities in Statter Harbor was impacts to herring fisheries, not marine mammals. As stated above, impacts to fish from the proposed project are expected to be localized and temporary, so are not likely to impact herring fisheries. If any tribes express concerns regarding project impacts to subsistence hunting of marine mammals, further communication between will take place, including provision of any project information, and clarification of any mitigation and minimization measures that may reduce potential impacts to marine mammals. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region Office of Protected Resources, whenever we propose to authorize take for endangered or threatened species.

The effects of this proposed Federal action were adequately analyzed in NMFS' 2019 Biological Opinion on the City and Borough of Juneau Docks and Harbors Department Statter Harbor Improvements Project, Juneau, Alaska, which concluded that the take NMFS proposes to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of Juneau for conducting pile driving and removal activities in Auke Bay between October 2020 and May 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA 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 construction activity. 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 Renewal 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: October 11, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–22730 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

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 December 17, 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. Comments will generally be posted without change. 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 David Kaiser, 603–862–2719 or *David.Kaiser@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice and request for public comment is for a request to extend a currently approved information collection.

The Coastal Zone Management Act (CZMA) creates a State-federal partnership to improve the management of the nation's coastal zone through the development of federally approved State coastal management plans (CMPs). The CZMA provides two incentives for States to develop federally approved CMPs: (1) The National Oceanic and Atmospheric Administration (NOAA) has appropriated monies to grant to States to develop and implement State CMPs that meet statutory and regulatory criteria; and (2) the CZMA requires federal agencies, non-federal licensees, and State and local government recipients of federal assistance to conduct their activities in a manner ''consistent'' with the enforceable policies of NOAA-approved CMPs. The latter incentive, referred to as the ''federal consistency'' provision, is found at 16 U.S.C. 1456. NOAA's regulations at 15 CFR part 930 implement NOAA's responsibilities to provide procedures for the consistency provision, the procedures available for an appeal of a State's objection to a consistency certification as provided for in 16 U.S.C. 1456(c)(3)(A) and (B) and 1456(d), and changes in the appeal process created by Congressional amendments in 1990, 1996 and 2005, and found at 16 U.S.C. 1465.

Paperwork and information collection occur largely outside of NOAA by: (1) State and Federal agencies engaged in licensing and permitting activities affecting coastal resources, (2) Federal agencies taking actions affecting State coastal zones, and (3) Federal agencies providing federal assistance to State and local governments in the coastal zone. In each of these cases, information is collected by the entity making the license, permit, assistance or action decision and NOAA's regulations provide for the use of that information already required by the State or Federal entity in the consistency process. Pursuant to 16 U.S.C. 1456, NOAA's regulations require the appropriate entity, Federal agency or applicant for license or permit, to prepare a consistency determination or certification. This information is provided to the relevant State CMP, not to NOAA. Information is provided to NOAA only when there is a State objection to a consistency certification, when informal mediation is sought by a Federal agency or State, or when an applicant for a federal license or permit appeals to the Secretary of Commerce for an override to a State CMPs objection to a consistency certification. Last, in 1990, Congress required State CMPs to provide for public participation in their permitting processes, consistency determinations and similar decisions, 16 U.S.C. 1455(d)(14), and NOAA regulations at part 930 implement that requirement.

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA) federal consistency provision, 16 U.S.C. 1456, and implementing regulations. These submissions are intended to provide a reasonable, efficient, and predictable means of complying with CZMA requirements. The paperwork submission requirements are detailed in 15 CFR part 930. The information will be used by coastal states with federally approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the state's coastal management program. Information will also be used by NOAA and the Secretary of Commerce for appeals to the Secretary by non-federal applicants regarding state CZMA objections to federal license or permit activities or Federal assistance activities.

II. Method of Collection

Information is submitted pursuant to the procedural requirements of the CZMA and its implementing federal consistency regulations. Required information is case-specific and not submitted by form. Methods of submittal include email and mail.

III. Data

OMB Control Number: 0648–0411.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, Local, or tribal government; Federal government; business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 2,334.

Estimated Time per Response: Applications, certifications, and state objection or concurrence letters, 8 hours each; state requests for review of unlisted activities, 4 hours; public notices, 1 hour; interstate listing notices, 30 hours; mediation, 2 hours; appeals to the Secretary of Commerce, 210 hours.

Estimated Total Annual Burden Hours: 35,799.

Estimated Total Annual Cost to Public: $9,024 in recordkeeping and reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

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

[FR Doc. 2019–22773 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR050

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the University of California Santa Cruz for authorization to take small numbers of marine mammals incidental to rocky intertidal monitoring along the coasts of Oregon and California over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the University of

California Santa Cruz's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the University of California Santa Cruz's application and request.

DATES: Comments and information must be received no later than November 18, 2019.

ADDRESSES: Comments on the applications 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.Meadows@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/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* 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: Dr. Dwayne Meadows, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the University of California Santa Cruz's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On August 12, 2019, NMFS received an application from the University of California Santa Cruz requesting authorization for take of marine mammals incidental to research activities related to rocky intertidal monitoring along the coasts of Oregon and California. After the applicant responded to our questions, we determined the application was adequate and complete on October 8, 2019. The requested regulations would be valid for five years, from 2020 through 2025. The University of California Santa Cruz plans to conduct necessary work, including research surveys, to monitor rocky intertidal communities. The proposed action may incidentally expose marine mammals occurring in the vicinity to researchers moving through their habitat, and setting up research transects and photoquadrats, thereby resulting in incidental take, by Level B harassment only. Therefore, the University of California Santa Cruz requests authorization to incidentally take marine mammals.

Specified Activities

The Partnership for Interdisciplinary Studies of Coastal Oceans (PISCO, *www.piscoweb.org*), administered by the University of California Santa Cruz, conducts monitoring at rocky intertidal sites in California and Oregon. They have been conducting similar research since 2013. Information from PISCO's research is used to inform marine policy and is also made available to the public through outreach and educational programs. The University of California Santa Cruz anticipates approximately 300 survey days over the course of the 5-year period. They expect to take California sea lions, Northern elephant seals, Steller sea lions, and California and Oregon/Washington stocks of harbor seals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the University of California Santa Cruz's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by University of California Santa Cruz, if appropriate.

Dated: October 11, 2019.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–22729 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

Renewal of Currently Approved Information Collection; Comment Request; Limited Access Death Master File Systems Safeguards Attestation Forms

AGENCY: National Technical Information Service, Department of 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 December 17, 2019.

ADDRESSES: Direct all written comments to John W. Hounsell, Program Manager, Office of Program Management, National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. 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 John W. Hounsell, at email: *jhounsell@ntis.gov* or telephone: 703–605–6184.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice informs the public that the National Technical Information Service (NTIS) is requesting the renewal of an information collection described in Section II for use in connection with the final rule entitled ''Certification Program for Access to the Death Master File.'' The final rule was published on June 1, 2016 and became effective on November 28, 2016. The information collection described in Section II, was approved and became effective on December 23, 2016.

II. Method of Collection

Title of Information Collection: ''Limited Access Death Master File Accredited Conformity Assessment Body Application for Firewalled Status'' (Firewalled Status Application Form).

Description of the need for the information and the proposed use: NTIS issued a final rule establishing a program through which persons may become eligible to obtain access to Death Master File (DMF) information about an individual within three years of that individual's death (81 FR 34882, June 1, 2016). The final rule was promulgated under Section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67 (Act). The Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-year period following an individual's death (Limited Access DMF), unless the person requesting the information has been certified to access the Limited Access DMF pursuant to certain criteria in a program that the Secretary establishes. The Secretary delegated the authority to carry out Section 203 to the Director of NTIS.

The final rule requires that, in order to become certified, a Person must submit a written attestation from an ''Accredited Conformity Assessment Body'' (ACAB), as defined in the final rule, that such Person has information security systems, facilities and procedures in place to protect the security of the Limited Access DMF, as required under Section 1110.102(a)(2) of the final rule. A Certified Person also must provide a new written attestation periodically for renewal of its certification as specified in the final rule. The ACAB must be independent of the Person or Certified Person seeking certification, unless it is a conformity assessment body which qualifies for ''firewalled status'' pursuant to Section 1110.502 of the final rule.

The Firewalled Status Application Form collects information that NTIS will use to evaluate whether the respondent qualifies for ''firewalled status'' under the rule, and, therefore, can provide a written attestation in lieu of an independent ACAB's attestation. This information includes specific requirements of Section 1110.502(b) of the final rule, which the respondent ACAB must certify are satisfied, and the provision of specific information by the respondent ACAB, such as the identity of the Person or Certified Person that would be the subject of the attestation and the basis upon which the certifications were made.

III. Data

OMB Control Number: 0692–0015.

Form Number(s): NTIS FM101.

Type of Review: Regular submission.

Affected Public: Accredited Conformity Assessment Bodies seeking firewalled status under 15 CFR 1110.502 because they are ''owned, managed or controlled'' by the Person or Certified Person for whom they are providing assessment(s) and or audit(s) under the final rule for the ''Certification Program for Access to the Death Master File.''

Estimated Number of Respondents: NTIS expects to receive approximately 250 applications and renewals for certification every year, of which it expects that approximately 20% of the required assessments will be provided by Accredited Conformity Assessment Bodies that will seek firewalled status in a given year. Accordingly, NTIS estimates that it will receive approximately 50 Firewalled Status Application Forms per year.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 50 (50 × 1 hour = 50 hours).

Estimated Total Annual Cost to Public: NTIS expects to receive approximately 50 applications annually at a fee of $268 per application, for a total cost to the public of $13,400. The total annual cost reflects the cost to the Federal Government, which consists of the expenses associated with NTIS personnel reviewing and processing the Firewalled Status Application Forms. In addition, NTIS estimates that it will take a senior auditor within the organization one hour to complete the form at a rate of $135 per hour, for a total additional cost to the public of $6,750 (50 burden hours × $135/hour = $6,750). NTIS estimates the total annual cost to the public to be $13,400 in fees + $6,750 in staff time = $20,150.

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 the potential 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. 2019–22779 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2019–0034]

October 2019 Patent Eligibility Guidance Update

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: In January 2019, the United States Patent and Trademark Office (USPTO) prepared revised guidance (2019 Patent Eligibility Guidance) for use by USPTO personnel in evaluating subject matter eligibility. The USPTO published the 2019 Patent Eligibility Guidance in the **Federal Register** and sought public comment on the guidance. In view of the comments received in response to the 2019 Patent Eligibility Guidance, the USPTO has produced an update of its 2019 Patent Eligibility Guidance (the October 2019 Patent Eligibility Guidance Update), which is available to the public on the USPTO's website. The October 2019 Patent Eligibility Guidance Update includes a new set of examples as well as a discussion of various issues raised by the public comments. The Update is intended to assist Office personnel in applying the 2019 Patent Eligibility Guidance. The Office continues to welcome public feedback on an ongoing basis on the October 2019 Patent Eligibility Guidance Update or on any patent eligibility issue.

ADDRESSES: Comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov.* To submit comments via *www.regulations.gov,* enter docket number PTO–P–2019–0034 on the home page and click ''search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Carolyn Kosowski, at 571–272–7688, Matthew Sked, at 571–272–7627, or June Cohan, at 571–272–7744, all Senior Legal Advisors at the Office of Patent Legal Administration.

SUPPLEMENTARY INFORMATION: The USPTO prepared the 2019 Patent Eligibility Guidance for use by USPTO personnel in determining subject matter eligibility under 35 U.S.C. 101. The USPTO published the 2019 Patent Eligibility Guidance in the **Federal Register** on January 7, 2019, and sought public comment on the guidance. *See 2019 Revised Patent Subject Matter Eligibility Guidance,* 84 FR 50 (Jan. 7, 2019).

The USPTO received numerous comments from the public. The public comments include requests for further explanation of the following five major themes: (1) Evaluation of whether a claim recites a judicial exception; (2) the groupings of abstract ideas enumerated in the 2019 Patent Eligibility Guidance; (3) evaluation of whether a judicial exception is integrated into a practical application; (4) the *prima facie* case and the role of evidence with respect to eligibility rejections; and (5) the application of the 2019 Patent Eligibility Guidance in the patent examining corps.

The USPTO has now produced the October 2019 Patent Eligibility Guidance Update responding to each of the major themes from the public comments. The October 2019 Patent Eligibility Guidance Update also includes three appendices. The first appendix (Appendix 1) provides new examples that are illustrative of major themes from the comments. The second appendix (Appendix 2) is a comprehensive index of examples for use with the 2019 Patent Eligibility Guidance, including examples issued prior to the publication of the 2019 Patent Eligibility Guidance. The third appendix (Appendix 3) lists and discusses selected eligibility cases from the Supreme Court and the U.S. Court of Appeals for the Federal Circuit.

The October 2019 Patent Eligibility Guidance Update, including the appendices, is available to the public on the USPTO's website (*https://www.uspto.gov/PatentEligibility*). Feedback on the October 2019 Patent Eligibility Guidance Update or on any patent eligibility issue is welcome on an ongoing basis. Instructions for submitting feedback are provided in the **ADDRESSES** section of this notice.

Dated: October 11, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–22782 Filed 10–17–19; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* November 17, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/7/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN(s)—Product Name(s):

5350–00–NIB–0013—Paper, Abrasive, Aluminum Oxide, 9″ x 11″ Sheet, 220 Grit

5350–00–NIB–0014—Paper, Abrasive, Aluminum Oxide, 9″ x 11″ Sheet, 180A Grit

5350–00–NIB–0056—Paper, Abrasive, Aluminum Oxide, 9 x 11″ Sheet, 150C Grit
5350–00–NIB–0015—Paper, Abrasive, Aluminum Oxide, 9″ x 11″ Sheet, 120 Grit
5350–00–NIB–0016—Paper, Abrasive, Aluminum Oxide, 9″ x 11″ Sheet, 60D Grit
5350–00–NIB–0052—Paper, Abrasive, Silicon Carbide, Wet or Dry, 9″ x 11″ Sheet, 1500A Grit
5350–00–NIB–0057—Sponge, Abrasive, Wet or Dry, 3.75″ x 2.625″ x 1″, Fine Grit
5350–00–NIB–0058—Sponge, Abrasive, Wet or Dry, 3.75″ x 2.625″ x 1″, Medium Grit

Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: Federal Acquisition Service, GSA/FSS Greater Southwest Acquisiti

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–22758 Filed 10–17–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete products and a service from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: November 17, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
MR 10772—Tumblers, Striped, Includes Shipper 20772
MR 10773—Water Bottle, Includes Shipper 20773
MR 11101—Paper, Parchment, Includes Shipper 21101
MR 13112—Cookie Sheet, Small, 9″ x 13″
MR 10763—Kid's Baking Tools, Licensed, Whisk and Spoon, Includes Shipper 20763
MR 10764—Kid's Baking Tools, Licensed, Turner and Spatula, Includes Shipper 20763
MR 10765—Kid's Baking Tools, Licensed, Rolling Pin and Cookie Cutters, Includes Shipper 20763
MR 10766—Kid's Baking Tools, Licensed, Decorating Set, Includes Shipper 20763
MR 10760—Activity Pack, Licensed, Pokemon, Includes Shipper 20760
MR 10761—Sticker Pack, Licensed, Pokemon, Includes Shipper 20760
MR 10762—Pen, Licensed, Pokemon, Includes Shipper 20762
MR 10734—Socks, Halloween, Includes Shipper 20734
MR 10678—Berry Colander, Includes Shipper 20678

Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Contracting Activity: Military Resale-Defense Commissary Agency

Service

Service Type: Janitorial/Custodial

Mandatory for: Jimmy Carter National Historic Site, Plains, GA

Mandatory Source of Supply: Middle Flint Behavioral HealthCare—Sumter County MR Center, Americus, GA

Contracting Activity: National Park Service, SER Regional Contracting OPO

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–22756 Filed 10–17–19; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0053]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to reinstate with change a previously approved collection, or a new or revised generic clearance titled, ''Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.'' Also, in accordance with the PRA, the Bureau is requesting Office of Management and Budget (OMB) approval of the Generic Information Collection titled, ''Industry Survey for the TRID Assessment'' under this Generic Information Collection Plan.

DATES: Written comments are encouraged and must be received on or before November 18, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under Review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.

OMB Control Number: 3170–0032.

Type of Review: Reinstatement with change of a previously Approved Information Collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 37,500.

Estimated Total Annual Burden Hours: 38,997.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act requires or authorizes the Bureau to implement new consumer protections in the offering or provision of certain consumer financial products and services. The information collected is required in order to effectively incorporate information from providers concerning compliance costs and other effects of regulations as part of the information base for potential rulemakings and prospective and retrospective regulatory burden analyses.

Information Collection

Title of Collection: Industry Survey for the TRID Assessment.

OMB Control Number: 3170–0032.

Type of Review: Request for approval of a generic information collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 11,906.

Estimated Total Burden Hours: 9,230.

Abstract: The Dodd-Frank Act requires that the Bureau assess its significant rules within 5 years of a rule's effective date. The Bureau has determined that its November 2013 final rule titled ''Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)'' (TRID Rule), with subsequent amendments, is a significant rule. The Act requires that the Bureau's assessment reflect available evidence and data that the Bureau may reasonably collect. This information collection will allow the Bureau to reach out to a cross-section of stakeholders and gather information from them about their experiences with the Rule.

This survey is one part of an overall effort to fulfill the Bureau's obligation to address, among other relevant factors, the effectiveness of the TRID Rule in meeting the purposes and objectives of title X of Dodd-Frank and the specific goals of the Rule as stated by the Bureau. As part of its broader information collection related to the assessment, the Bureau has obtained, or is working to obtain, data from a number of other sources.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on June 5, 2019, 84 FR 26078, Docket Number: CFPB–2019–0031. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (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 may address the overall information collection request plan or the individual collection. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: October 15, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–22771 Filed 10–17–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0054]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew with changes the Office of Management and Budget (OMB) approval for an existing information collection, titled, ''Evaluation of Financial Empowerment Training Program.''

DATES: Written comments are encouraged and must be received on or before November 18, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of Financial Empowerment Training Program.

OMB Control Number: 3170–0067.

Type of Review: Extension with change of an existing information collection.

Affected Public: Business and other non-profit institutions.

Estimated Number of Respondents: 7,500.

Estimated Total Annual Burden Hours: 1,899.

Abstract: The Consumer Financial Protection Bureau's (Bureau) Office of Community Affairs (OCA) is responsible for developing strategies to improve the financial capability of low-income and economically vulnerable consumers, such as consumers who are unbanked or underbanked, those with thin or no credit file, and households with limited savings. To address the needs of these consumers, OCA has developed Your Money, Your Goals, a suite of financial

empowerment materials with an accompanying training program. These resources equip frontline staff and volunteers in a range of organizations to provide relevant and effective information, tools, and resources designed to improve the financial outcomes and capability of these vulnerable consumers. The Bureau seeks to renew OMB approval of this information collection which collects qualitative data related to evaluating the effectiveness of the Your Money, Your Goals training program. The collection focus on evaluating Your Money, Your Goals training practices in enhancing the ability of frontline staff and volunteers to inform and educate low-income consumers about managing their finances. The collection also serves to assess the extent of workshop participants' execution of follow-on trainings, designed to share Your Money, Your Goals tools and resources with other frontline staff and volunteers, so they can use them with the people they serve. The Bureau expects to collect qualitative data through paper-based and web-based surveys. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on June 24, 2019, 84 FR 29503, Docket Number: CFPB–2019–0035. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (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 reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: October 15, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–22770 Filed 10–17–19; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 16, 2019; 1:30 p.m.*

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Matters: Staff will brief the Commission on the status of compliance matters.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: October 15, 2019.

Alberta E. Mills,

Secretary.

[FR Doc. 2019–22848 Filed 10–16–19; 11:15 am]

BILLING CODE 6355–01–P

* The Commission unanimously determined by recorded vote that Agency business requires calling the meeting without seven calendar days advance public notice.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Chief Management Officer, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Closed to the public Wednesday, November 6, 2019 from 8:00 a.m. to 10:00 a.m. Open to the public Wednesday, November 6, 2019 from 10:00 a.m. to 10:45 a.m. Closed to the public Wednesday, November 6, 2019 from 10:45 a.m. to 2:30 p.m.

ADDRESSES: The closed and open portions of the meeting will be in Room 3E869 in the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roma Laster, (703) 695–7563 (Voice), (703) 614–4365 (Facsimile), *roma.k.laster.civ@mail.mil* (Email). Mailing address is Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, website: *http://dbb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: To obtain, review, and evaluate information related to the Board's mission in advising the Secretary of Defense on overall DoD management and governance on (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the Chief Management Officer of the Department of Defense (CMO) to allow the Board to provide informed, independent advice reflecting an outside private sector perspective of proven and effective best practices that can be applied to the DoD.

Agenda: The closed meeting will begin on November 6, 2019 at 8:00 a.m. with opening remarks by Ms. Roma Laster, the Designated Federal Officer. The Board will receive classified information provided by the National Guard Bureau and the United States Navy on the status of each respective organization. The meeting will go into open session at 10:00 a.m. where the Board Interim Chair will provide an update on the Board's activities in support of current DoD reform efforts. The meeting will again go into closed session at 10:45 a.m. for classified discussions on proposed reform efforts, key challenges, and current scorecard within the Fourth Estate; classified discussions with the Secretary of Defense, Deputy Secretary of Defense, and the Chief Management Officer in regards to ongoing reform efforts; and classified briefings from the Special Assistant to the Chief of the National Guard Bureau and the Director, Space Force Planning Task Force on the establishment of both U.S. Space Command (USSPACECOM) and United States Space Force (USSF). The meeting will adjourn at 2:30 p.m.

Meeting Accessibility: In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that portions of the Board's meeting will be closed to the public. Specifically, the CMO, after consultation with the DoD Office of General Counsel, has determined in writing that from 8:00

a.m. to 10:00 a.m. and again from 10:45 a.m. to 2:30 p.m. the meeting will be closed as the Board will consider classified information covered by 5 U.S.C. 552b(c)(1). This determination is based on the consideration that the information presented by the National Guard Bureau and the U.S. Navy, discussions on the Fourth Estate, discussions with the Secretary, Deputy Secretary of Defense, the CMO, and information presented on Space are classified and it is expected that discussions throughout these briefings will involve classified matters of national defense or foreign policy. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without disclosing secret, confidential, or otherwise classified material. Pursuant to FACA and 41 CFR 102–3.140, that portion of the meeting from 10:00 a.m. to 10:45 a.m. is open to the public. Public attendees requiring escort should arrive at the Pentagon Visitor Center (adjacent to the Pentagon Metro Entrance) with sufficient time to complete security screening no later than 9:30 a.m. on November 6, 2019. To complete security screening, come prepared to present two forms of identification one of which must be a pictured identification card.

Written Statements: Written comments on this, or any other Defense Business Board related topic, may be submitted to the Designated Federal Officer via email to mailbox address: *osd.pentagon.odam.mbx.defense-business-board@mail.mil* in either Adobe Acrobat or Microsoft Word format. Comments received 24 hours prior to the scheduled meeting will be presented during the meeting. After such time the statement will be distributed to the membership for their review and attached as a tab to the final study. Please note that because the Board operates under the provisions of the FACA, all submitted comments will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: October 15, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–22804 Filed 10–17–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 12, 2019 2:00 p.m.–4:00 p.m. EST.

ADDRESSES: WebEx Conference Call, US Toll: +1–415–527–5035, Attendee Access Code: 903 674 286.

FOR FURTHER INFORMATION CONTACT: David Borak, Federal Coordinator, EMAB (EM–4.32), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Phone (202) 586–9928 or email: *david.borak@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda: This topic discussed at this meeting will be the EMAB subcommittee draft report on the human resources needed to support the end state contracting approach in EM.

Public Participation: EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number or email address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact David Borak at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/em/listings/emab-meetings.*

Signed in Washington, DC, on October 11, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–22717 Filed 10–17–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2731–001.
Applicants: Heritage Stoney Corners Wind Farm I, LLC.
Description: Compliance filing: Heritage Stoney Corners Wind Farm I, LLC Change in Status to be effective 10/12/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5146.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER12–421–002.
Applicants: Heritage Garden Wind Farm I, LLC.
Description: Compliance filing: Heritage Garden Wind Farm I, LLC Change in Status Filing to be effective 10/12/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5154.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER19–2417–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing Pursuant to Commission's September 16, 2019 Order to be effective 9/23/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5060.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER19–2589–001.
Applicants: Appalachian Power Company, PJM Interconnection, L.L.C.
Description: Compliance filing: AEP submits compliance filing per Commission's 9/16/19 Order to be effective 3/6/2019.

Filed Date: 10/11/19.
Accession Number: 20191011–5023.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–83–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Revisions to OA in compliance with the Commission's 8/26/2019 Order in EL15–79 to be effective 12/10/2019.
Filed Date: 10/10/19.
Accession Number: 20191010–5150.
Comments Due: 5 p.m. ET 10/31/19.

Docket Numbers: ER20–84–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Notice of Succession, Rate Schedules & Service Agreements to be effective 12/9/2019.
Filed Date: 10/10/19.
Accession Number: 20191010–5152.
Comments Due: 5 p.m. ET 10/31/19.

Docket Numbers: ER20–85–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Notice of Succession, Cost-Based Cooperatives to be effective 12/10/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5000.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–86–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Small Generator Interconnection Service Agreement No. 410 of Pacific Gas and Electric Company.
Filed Date: 10/10/19.
Accession Number: 20191010–5164.
Comments Due: 5 p.m. ET 10/31/19.

Docket Numbers: ER20–87–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Small Generator Interconnection Service Agreement No. 401 of Pacific Gas and Electric Company.
Filed Date: 10/10/19.
Accession Number: 20191010–5172.
Comments Due: 5 p.m. ET 10/31/19.

Docket Numbers: ER20–88–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Dominion Energy SC 2nd Amended & Restated Interconnection Agreement Filing to be effective 4/29/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5015.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–89–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO–NE and NEPOOL; Fuel Security Retention Limit Revision to be effective 12/11/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5021.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–90–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–10–11_SA 3361 Big Rivers Electric-Republic T–T to be effective 9/11/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5064.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–92–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee, Eversource Energy Service Company (as agent),Vermont Electric Power Company, Inc.
Description: § 205(d) Rate Filing: ISO–NE and NEPOOL; Transmission Planning Improvements to be effective 12/10/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5108.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–93–000.
Applicants: Heritage Stoney Corners Wind Farm I, LLC.
Description: Compliance filing: Revised MBR and Affiliate Sales Authorization Compliance Filing to be effective 9/12/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5139.
Comments Due: 5 p.m. ET 11/1/19.

Docket Numbers: ER20–94–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–10–11 Non-Resource-Specific System Resource RA Resource Bid Gen Amendment to be effective 10/12/2019.
Filed Date: 10/11/19.
Accession Number: 20191011–5156.
Comments Due: 5 p.m. ET 11/1/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–46–000.
Applicants: Eco Green Generation LLC.
Description: Form 556 of Eco Green Generation LLC [Clean Power #4].
Filed Date: 10/11/19.
Accession Number: 20191011–5134.
Comments Due: None Applicable.

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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22787 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–19–000]

Grid-Enhancing Technologies; Supplemental Notice of Workshop

As announced in the Notice of Workshop issued on September 9, 2019, the Federal Energy Regulatory Commission (Commission) will convene a staff-led workshop in the above-referenced proceeding on Tuesday, November 5, 2019, from approximately 9:30 a.m. to 4:00 p.m., and Wednesday, November 6, 2019, from approximately 9:00 a.m. to 12:45 p.m. (Eastern Time). The workshop will be held at Commission headquarters, 888 First Street NE, Washington, DC 20426. The Chairman and Commissioners may attend and participate.

The purpose of this workshop is to discuss grid-enhancing technologies that increase the capacity, efficiency, or reliability of transmission facilities. Panelists and staff will discuss how grid-enhancing technologies are currently used in transmission planning and operations, the challenges to their deployment and implementation, and what the Commission can do regarding those challenges, including regulatory approaches such as incentives or requirements for the adoption of grid-enhancing technologies. These technologies include, but are not limited to: (1) Power flow control and transmission switching equipment; (2) storage technologies; and (3) advanced line rating management technologies. There will be an opportunity to submit written comments after the workshop. A notice setting the date when comments

are due will be issued after the workshop.

The agenda and a list of participants for this workshop is attached. The workshop will be open for the public to attend in person, or to attend remotely via webcast. In-person attendees are encouraged to register on-line at: *http://www.ferc.gov/whats-new/registration/11-06-19-form.asp.* In-person attendees should allow time to pass through building security procedures before start time of the workshop. Although there is no registration deadline for in-person attendees, we strongly encourage attendees to register for the workshop as soon as possible, in order to avoid any delay associated with being processed by FERC security. Those who plan to attend the conference remotely via webcast must register by 5:00 p.m. Eastern Time on October 29, 2019. The webcast may not be available to those who do not register.

Information on the workshop (including a link to the webcast) will be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conference via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call 703–993–3100. The workshop will be transcribed. Transcripts will be available for a fee from Ace Reporting (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about this workshop, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8368, *Sarah.Mckinley@ferc.gov*

Samin Peirovi (Technical Information), Office of Energy Policy and Innovation, (202) 502–8080, *Samin.Peirovi@ferc.gov*

Dated: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22786 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–79–000]

Voyager Wind IV Expansion, 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 Voyager Wind IV Expansion, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22795 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–78–000]

San Jacinto Wind II, 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 San Jacinto Wind II, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22794 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–75–000]

Oasis Alta, 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 Oasis Alta, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22791 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–72–000]

Coachella Wind Holdings, 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 Coachella Wind Holdings, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22789 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–74–000]

Desert Hot Springs, 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 Desert Hot Springs, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22790 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–77–000]

Painted Hills Wind Holdings, 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 Painted Hills Wind Holdings, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22793 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–71–000]

Coachella Hills Wind, 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 Coachella Hills Wind, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22788 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–76–000]

Oasis Plains Wind, 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 Oasis Plains Wind, 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 October 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: October 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22792 Filed 10–17–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9047–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 10/07/2019 10 a.m. ET Through 10/14/2019 10 a.m. ET

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190252, Draft, USFS, AZ, 4FRI Rim Country Project, Comment Period Ends: 01/16/2020, Contact: Robbin Redman 928–527–3635

EIS No. 20190253, Draft, BLM, NV, Coeur Rochester and Packard Mines Plan of Operations, Amendment 11, Comment Period Ends: 12/02/2019, Contact: Kathleen Rehberg 775–623–1500

EIS No. 20190254, Draft, USFS, AK, Rulemaking for Alaska Roadless Areas, Comment Period Ends: 12/18/2019, Contact: Ken Tu 202–403–8991

Amended Notice

EIS No. 20190201, Final, BLM, UT, Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands previously included in the Monument that are excluded from the Boundaries Draft Resource Management Plans and Final Environmental Impact Statement, Review Period Ends: 11/18/2019, Contact: Harry Barber 435–644–1200

Revision to FR Notice Published 08/23/2019; BLM has reopened the review period to end on 11/18/2019.

Dated: October 15, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–22759 Filed 10–17–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this notice announces the establishment of a computer matching program the Federal Communications Commission (FCC or Commission or Agency) and the Universal Service Administrative Company (USAC) will conduct with agencies from the States of South Carolina, Virginia, and Washington. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before November 18, 2019. This computer matching program will commence on November 18, 2019, unless written comments are received that require a contrary determination, and will conclude on April 19, 2021.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or to *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (National Verifier), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program. The purpose of this particular program is to verify Lifeline eligibility by establishing that applicants or subscribers from South Carolina, Virginia, and Washington are enrolled in the SNAP or Medicaid programs.

Participating Non-Federal Agencies

- The South Carolina Department of Social Services;
- The Virginia Department of Social Services; and
- The Washington State Department of Social and Health Services, Economic Services Administration.

Authority for Conducting the Matching Program

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7.

Categories of Individuals

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, a Lifeline applicant or subscriber's full name; physical and mailing addresses; partial Social Security number or Tribal ID number; date of birth; qualifying person's full name (if qualifying person is different from subscriber); qualifying person's physical and mailing addresses; qualifying person's partial Social Security number or Tribal ID number; and qualifying person's date of birth. The National Verifier will transfer these data elements to the source agencies, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program.

System(s) of Records

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 82 FR 38686 (Aug. 15, 2017) and became effective on September 14, 2017.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2019–22753 Filed 10–17–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0311, 3060–0433 and 3060–0863]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 17, 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 notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0311.

Title: 47 CFR 76.54, Significantly Viewed Signals; Method to be followed for Special Showings.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 500 respondents, 1,274 responses.

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

Estimated Time per Response: 1–15 hours (average).

Total Annual Burden: 20,610 hours.

Total Annual Cost: $300,000.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) and 340 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 76.54(b) state significant viewing in a cable television or satellite community for signals not shown as significantly viewed under 47 CFR 76.54(a) or (d) may be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level.

The information collection requirements contained in 47 CFR 76.54(c) are used to notify interested parties, including licensees or permittees of television broadcast stations, about audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections.

Lastly, 47 CFR 76.54(e) and (f), are used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,413 respondents and 3,413 responses.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement.

Estimated Time per Hours: 20 hours.

Total Annual Burden: 68,260 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Cable television system operators and Multichannel Video Programming Distributors (MPVDs) who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a Cumulative Signal Leakage Index (CLI) derived under 47 CFR 76.611(a)(1) or the results of airspace measurements derived under 47 CFR 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing of FCC Form 320 is done in accordance with 47 CFR 76.1803. The records must be retained by cable operators.

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 848 respondents; 250,000 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement, On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection action is contained in the Satellite Home Viewer Act, 17 U.S.C. 119. The Satellite Home Viewer Act is an amendment of the Copyright Act; and Satellite Television Extension and Localism Act of 2010, Title V of the ''American Workers, State, and Business Relief Act of 2010,'' Public Law 111–175, 124 Stat. 1218 (2010) (STELA), see footnote 3.

Total Annual Burden to Respondents: 125,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B contour signal strength tests will be used to indicate whether a household is ''unserved'' by over-the-air network signals.

Satellite and broadcast industries making field strength measurements for formal submission to the Commission in rulemaking proceedings, or making such measurements upon the request of the Commission, shall follow the procedure for making and reporting such measurements which shall be included in a report to the Commission and submitted in affidavit form, in triplicate. The report shall contain the following information:

(a) Tables of field strength measurements, which for each measuring location; (b) U.S. Geological Survey topographic maps; (c) All information necessary to determine the pertinent characteristics of the transmitting installation; (d) A list of calibrated equipment used in the field strength survey; (e) A detailed description of the calibration of the measuring equipment, and (f) Terrain profiles in each direction in which measurements were made.

The information collection requirements contained in 47 CFR 73.686 also requires satellite and broadcast companies to maintain a written record describing, for each location, factors which may affect the recorded field (*i.e.,* the approximate time or measurement, weather, topography, overhead wiring, heights and types of vegetation, buildings and other structures, the orientation of the measuring location, objects of such shape and size that cause shadows or reflections, signals received that arrived from a direction other than that of the transmitter, survey, list of the measured value field strength, time and date of the measurements and signature of the person making the measurements).

The information collection requirements contained in 47 CFR 73.686(e) describes the procedures for measuring the field strength of digital television signals. These procedures will be used to determine whether a household is eligible to receive a distant digital network signal from a satellite television provider, largely rely on existing, proven methods the Commission has already established for measuring analog television signal strength at any individual location, as set forth in Section 73.686(d) of the existing rules, but include modifications as necessary to accommodate the inherent differences between analog and digital TV signals. The new digital signal measurement procedures include provisions for the location of the measurement antenna, antenna height, signal measurement method, antenna orientation and polarization, and data recording.

Therefore, satellite and broadcast industries making field strength measurements shall maintain written records and include the following information: (a) A list of calibrated equipment used in the field strength survey, which for each instrument specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture; (b) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable; (c) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features; (d) A description of where the cluster measurements were made; (e) Time and date of the measurements and signature of the person making the measurements; (f) For each channel being measured, a list of the measured value of field strength (in units of dBμ after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22746 Filed 10–17–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0713]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 17, 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 notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0713.

Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 53 respondents; 2,650 responses.

Estimated Time per Response: 5 minutes (0.084 hours).

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in 47 U.S.C. 303(n) and 47 CFR 73.1225.

Total Annual Burden: 223 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. If the Commission requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to § 45.9 of the Commission's rules, 47 CFR 45.9.

Needs and Uses: The Alternative Broadcast Inspection Program (ABIP) is a series of agreements between the Federal Communications Commission's (FCC) Enforcement Bureau and a private entity, usually a state broadcast association, whereby the private entity agrees to facilitate inspections (and re-inspections, where appropriate) of participating broadcast stations to determine station compliance with FCC regulations. Broadcast stations participate in ABIP on a voluntary basis. The private entities notify their local FCC District Office or Resident Agent Office in writing of those stations that pass the ABIP inspection and have been issued a Certificate of Compliance by the ABIP inspector. The FCC uses this information to determine which

broadcast stations have been certified in compliance with FCC Rules and will not be subject to certain random FCC inspections.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22747 Filed 10–17–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than October 31, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *John Houghton, James Houghton, Eric Houghton, Allison Houghton, Betty Houghton, Mary Kay Houghton, Kaleb Houghton, and Andrew Hoffman, all of McPherson, Kansas; Marcus Houghton, Corbin Houghton, Paige Moore, and Hannah Nesbitt, all of Wichita, Kansas; and Timothy Houghton, Milwaukee, Oregon;* to be approved as members acting in concert with the Houghton Family Control Group, to acquire voting shares of PBT Bancshares, Inc. and thereby indirectly acquire voting shares of Peoples Bank and Trust Company, both of McPherson, Kansas.

Board of Governors of the Federal Reserve System, October 11, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–22723 Filed 10–17–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Filings Related to the Gramm-Leach-Bliley Act (FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023; OMB No. 7100–0292).

DATES: Comments must be submitted on or before December 17, 2019.

ADDRESSES: You may submit comments, identified by *FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposals

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated

collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Filings Related to the Gramm-Leach-Bliley Act.

Agency form numbers: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023.

OMB control number: 7100–0292.

Frequency: On occasion.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), foreign banking organizations (FBOs), and state member banks.

Estimated number of respondents: FR 4010: BHCs and SLHCs, 58, and FBOs, 4; FR 4011: 1; FR 4012: BHCs and SLHCs decertified as a financial holding company (FHC), 2, and FHCs back into compliance—BHCs and SLHCs, 14; FR 4017: 1; FR 4019: Regulatory relief requests, 1, and Portfolio company notification, 1; FR 4023: 30.

Estimated average hours per response: FR 4010: BHCs and SLHCs, 3, and FBOs, 3.5; FR 4011: 10; FR 4012: BHCs and SLHCs decertified as an FHC, 1, and FHCs back into compliance—BHCs and SLHCs, 10; FR 4017: 4; FR 4019: Regulatory relief requests, 1, and Portfolio company notification, 1; FR 4023: 50.

Estimated annual burden hours: FR 4010: BHCs and SLHCs, 174, FBOs, 14; FR 4011: 10; FR 4012: BHCs and SLHCs decertified as an FHC, 2, and FHCs back into compliance—BHCs and SLHCs, 140; FR 4017: 4; FR 4019: Regulatory relief requests, 1, and Portfolio company notification, 1; FR 4023: 1,500.

General description of report: These reporting and recordkeeping requirements, which are related to amendments made by the Gramm-Leach-Bliley Act (GLBA) to the Bank Holding Company Act (BHC Act) and the Federal Reserve Act (FRA), are composed of the following:

- Declarations to Become a Financial Holding Company (FR 4010);
- Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011);
- Notices of Failure to Meet Capital or Management Requirements (FR 4012);
- Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017);
- Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019); and
- Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023).

These collections of information are event-generated and there are no formal reporting forms for these collections of information. In each case, the information required to be filed is described in the Board's regulations.

Legal authorization and confidentiality: The FR 4010 is authorized pursuant to section 4(*l*) of the BHC Act [1] and section 10(c)(2)(H) of the Home Owners' Loan Act (''HOLA'').[2] The FR 4011 is authorized pursuant to sections 4(j) and (k) of the BHC Act.[3] The FR 4012 is authorized pursuant to section 5(b) of the BHC Act [4] and section 10(g) of the HOLA.[5] The FR 4017 is authorized pursuant to section 9 of the FRA.[6] The FR 4019 and FR 4023 are authorized pursuant to section 4(k)(7) of the BHC Act.[7] The obligation to respond to the FR 4010, FR 4011, FR 4017, and FR 4019 is required to obtain a benefit. The obligation to respond to the FR 4012 and comply with the recordkeeping requirements of the FR 4023 are mandatory.

Regarding information submitted pursuant to the FR 4010, FR 4011, FR 4017, and FR 4019, a firm may request confidential treatment under the Board's rules regarding confidential treatment of information at 12 CFR 261.15. The Board will consider whether such information may be kept confidential in accordance with exemption 4 of the Freedom of Information Act (''FOIA''), which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)), or any other applicable FOIA exemption.

[1] 12 U.S.C. 1843(*l*). For foreign banking organizations, the FR 4010 is authorized pursuant to section 4(*l*) of the BHC Act (12 U.S.C. 1843(*l*)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106(a)).

[2] 12 U.S.C 1467a(c)(2)(H).

[3] 12 U.S.C. 1843(j)–(k).

[4] 12 U.S.C. 1844(b). For foreign banking organizations, the FR 4012 is authorized pursuant to section 5(b) of the BHC Act (12 U.S.C. 1844(b)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106).

[5] 12 U.S.C. 1467a(g).

[6] 12 U.S.C. 335.

[7] 12 U.S.C. 1843(k)(7). For foreign banking organizations, the FR 4019 and 4023 are authorized pursuant to section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106).

Board of Governors of the Federal Reserve System, October 11, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–22734 Filed 10–17–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Interagency Policy Statement on Funding and Liquidity Risk Management (FR 4198; OMB No. 7100–0326). The revisions are applicable immediately.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval under OMB Delegated Authority of the Extension for Three

Years, With Revision, of the Following Information Collection:

Report title: Interagency Policy Statement on Funding and Liquidity Risk Management.

Agency form number: FR 4198.

OMB control number: 7100–0326.

Effective Date: Immediately.

Frequency: Annually.

Respondents: Bank holding companies, savings and loan holding companies, state-licensed branches and agencies of foreign banks (other than insured branches), corporations organized or operating under sections 25 or 25A of the Federal Reserve Act (agreement corporations and Edge corporations), and state member banks.

Estimated number of respondents: Implementing recordkeeping, 30; ongoing recordkeeping, 4,789.

Estimated average hours per response: Implementing recordkeeping, 160 hours; ongoing recordkeeping, 32 hours.

Estimated annual burden hours: 158,048 hours.

General description of report: The Interagency Policy Statement on Funding and Liquidity Risk Management (Guidance) [1] states that financial institutions should develop and document liquidity risk management policies and procedures commensurate with the institution's complexity, risk profile, and scope of operations. Sections 3 and 6 of the Guidance provide that financial institutions should maintain such policies and procedures. Section 6 of the Guidance states that financial institutions should have a contingency funding plan (CFP) that sufficiently addresses potential adverse liquid events and emergency cash flow requirements, and section 34 of the Guidance states that the CFP should be documented.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act [2] (for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act [3] (for bank holding companies); section 10(b)(3) of the Home Owners' Loan Act [4] (for savings and loan holding companies); and section 7(c)(2) of the International Banking Act [5] (for state-licensed branches and agencies of foreign banks, other than insured branches). Because the recordkeeping provisions are contained within guidance, which is nonbinding, they are voluntary.[6] There are no reporting forms associated with this information collection.

Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process (5 U.S.C. 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects ''commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 552(b)(4)).

Current actions: On June 25, 2019, the Board published a notice in the **Federal Register** (84 FR 29862) requesting public comment for 60 days on the extension, with revision, of the Interagency Policy Statement on Funding and Liquidity Risk Management. The Board proposed to revise the FR 4198 to account for all of the recordkeeping provisions set forth in the Guidance related to liquidity risk management policies, procedures, and assumptions, and CFPs. The comment period for this notice expired on August 26, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, October 11, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–22736 Filed 10–17–19; 8:45 am]

BILLING CODE 6210–01–P

[1] ''Interagency Policy Statement on Funding and Liquidity Risk Management,'' 75 FR 13656 (March 22, 2010). The Guidance was published jointly by the Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

[2] 12 U.S.C. 324, 602, and 625, respectively.

[3] 12 U.S.C. 1844(c).

[4] 12 U.S.C. 1467a(b)(3).

[5] 12 U.S.C. 3105(c)(2).

[6] *See* SR 18–5/CA 18–7: Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Disclosure and Reporting Requirements of the Community Reinvestment Act (CRA)-Related Agreements (Regulation G) (FR G; OMB No. 7100–0299).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection:

Report title: Disclosure and Reporting Requirements of the Community Reinvestment Act (CRA)-Related Agreements (Regulation G).

Agency form number: FR G.

OMB control number: 7100–0299.

Frequency: Quarterly, annually, and on occasion.

Respondents: State member banks and their subsidiaries, bank holding companies, and savings and loan holding companies (Insured Depository Institutions (IDIs)); affiliates of bank holding companies and savings and loan holding companies, other than banks, savings associations, and subsidiaries of banks and savings associations; and nongovernmental entities or persons (NGEPs) that enter into covered agreements with any of the aforementioned companies.

Estimated number of respondents: Reporting: IDIs and affiliates—Copy of agreements to agency, 2 respondents; List of agreements to agency, 2 respondents; Annual report, 2 respondents; and Filing NGEP annual report, 2 respondents; Reporting: NGEP—Copy of agreements to agency, 6 respondents; and Annual Report, 6 respondents; Disclosure: IDIs and affiliates—Covered agreements to public, 2 respondents; and Agreements relating to activities of CRA affiliates, 2 respondents; and Disclosure: NGEP—Covered agreements to public, 6 respondents.

Estimated average hours per response: Reporting: IDIs and affiliates—Copy of agreements to agency, 1 hour; List of agreements to agency, 1 hour; Annual report, 4 hours; and Filing NGEP annual report, 1 hour; Reporting: NGEP—Copy of agreements to agency, 1 hour; and Annual Report, 4 hours; Disclosure: IDIs and affiliates—Covered agreements to public, 1 hour; and Agreements relating to activities of CRA affiliates, 1 hour; and Disclosure: NGEP—Covered agreements to public, 1 hour.

Estimated annual burden hours: Reporting: IDIs and affiliates—Copy of agreements to agency, 8 hours; List of agreements to agency, 8 hours; Annual report, 8 hours; and Filing NGEP annual report, 6 hours; Reporting: NGEP—Copy of agreements to agency, 6 hours; and Annual Report, 24 hours; Disclosure: IDIs and affiliates—Covered agreements to public, 6 hours; and Agreements relating to activities of CRA affiliates, 6 hours; and Disclosure: NGEP—Covered agreements to public, 6 hours.

General description of report: The Gramm-Leach-Bliley Act (GLBA) amended the Federal Deposit Insurance Act (FDI Act) by adding a new section 48, entitled ''CRA Sunshine Requirements.'' Section 48 imposes disclosure and reporting requirements on IDIs, their affiliates, and NGEPs that enter into written agreements that (1) are made in fulfillment of the CRA and (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year. Section 48 excludes from the disclosure and reporting requirements any CRA-related agreement between an IDI or its affiliate, on the one hand, and an NGEP, on the other hand, if the NGEP has not contacted the IDI, its affiliate, or a federal banking agency concerning the CRA performance of the IDI.

The GLBA directed the Board, as well as the other federal banking agencies, to issue consistent and comparable regulations to implement the requirements of section 48 of the FDI Act. In 2001, the agencies promulgated substantially identical regulations, which interpret the scope of written agreements that are subject to the statute and implement the disclosure and reporting requirements of section 48.[1] The Board's Regulation G implements the provisions of the GLBA requiring both IDIs and NGEP to make a copy of any covered agreement available to the public and the appropriate federal banking agency, and to file an annual report with each appropriate federal banking agency regarding the use of funds under such agreement for that fiscal year. In addition, each calendar quarter, an IDI and its affiliates must provide to the appropriate federal banking agency a list of all covered agreements entered into during that quarter or a copy of the covered agreements.

Legal authorization and confidentiality: The disclosure and reporting requirements of Regulation G are authorized pursuant to the authority of the Board to prescribe regulations to carry out the purposes of section 711 of GLBA.[2] The obligation to comply with the disclosure and reporting requirements of Regulation G is mandatory. Because the disclosure and reporting requirements of section 711 and Regulation G require relevant parties to disclose covered agreements to the public, an entity subject to Regulation G would likely be unable to prevent the Board from releasing a covered agreement to the public.[3] However, in the preamble to Regulation G, the Board stated that an entity subject to Regulation G may submit a public version of its covered agreements to the Board with a request for confidential treatment. The Board further stated that it would release this version to the public unless it received a request under the Freedom of Information Act (FOIA) for the entirety of the CRA-related agreement. In such case, information in the agreement may be protected from disclosure by FOIA exemptions (b)(4) (which protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential'')[4] and (b)(8) (which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process).[5]

Current actions: On July 9, 2019, the Board published an initial notice in the **Federal Register** (84 FR 32743) requesting public comment for 60 days on the extension, without revision, of the Disclosure and Reporting Requirements of the Community Reinvestment Act (CRA)-Related Agreements (Regulation G) (FR G). The comment period for this notice expired on September 9, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, October 11, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–22725 Filed 10–17–19; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 CFR part 35 (Office of the Comptroller of the Currency); 12 CFR part 207 (Board); 12 CFR part 346 (Federal Deposit Insurance Corporation).

[2] 12 U.S.C. 1831y(h)(1).

[3] The Board noted in the preamble to Regulation G that section 711 would require disclosure of some types of information that an agency might normally withhold from disclosure under the FOIA and that the Board would not keep information confidential under the FOIA that a party would be required to disclose under section 711. Disclosure and Reporting of CRA-Related Agreements, 66 **Federal Register** 2052, 2066–2067 (Jan. 10, 2001).

[4] 5 U.S.C. 552(b)(4).

[5] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with Guidance on Leveraged Lending (FR 4203; OMB No. 7100–0354).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the PRA OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping Provisions Associated with Guidance on Leveraged Lending.

Agency form number: FR 4203.

OMB control number: 7100–0354.

Frequency: On occasion.

Respondents: All financial institutions substantively engaged in leveraged lending activities supervised by the Board.

Estimated number of respondents: 40.

Estimated average hours per response: 755.

Estimated annual burden hours: 30,200 hours.

General description of report: The Interagency Guidance on Leveraged Lending (Guidance) [1] outlines high-level principles related to safe-and-sound leveraged lending activities. The Guidance includes a number of voluntary recordkeeping provisions that apply to financial institutions for which the Board is the primary federal supervisor, including bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks, that engage in leveraged lending activities. There are no reporting forms associated with this information collection (the FR 4203 designation is for internal purposes only).

The Guidance includes several provisions that suggest financial institutions engage in recordkeeping. The guidance states that institutions should maintain:

- Well-defined underwriting standards that, among other things, define acceptable leverage levels and describe amortization expectations for senior and subordinate debt;
- sound management information systems that enable management to identify, aggregate, and monitor leveraged exposures and comply with policy across all business lines;
- strong pipeline management policies and procedures that, among other things, provide for real-time information on exposures and limits, and exceptions to the timing of expected distributions and approved hold levels; and
- guidelines for conducting periodic portfolio and pipeline stress tests to quantify the potential impact of economic and market conditions on the institution's asset quality, earnings, liquidity, and capital.

Many community banks are not subject to the Guidance because they do not engage in leveraged lending. The limited number of community and smaller institutions that are involved in leveraged lending activities may discuss with the Federal Reserve System how to implement these collections of information in a cost-effective manner that is appropriate for the complexity of their exposures and activities.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act (12 U.S.C. 324, 602, and 625) (for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) (for bank holding companies); section 10(b)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(3)) (for savings and loan holding companies); and section 7(c)(2) of the International Banking Act (12 U.S.C. 3105(c)(2)) (for state-licensed branches and agencies of foreign banks, other than insured branches).

The information collections under the FR 4203 are voluntary. Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process (5 U.S.C. 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects ''commercial or financial information obtained from a person [that is] privileged or confidential'' (5 U.S.C. 552(b)(4)).

Current actions: On July 3, 2019, the Board published a notice in the **Federal Register** (84 FR 31866) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Provisions Associated with Guidance on Leveraged Lending. The comment period for this notice expired on September 3, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, October 11, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–22733 Filed 10–17–19; 8:45 am]

BILLING CODE 6210–01–P

[1] ''Interagency Guidance on Leveraged Lending,'' March 21, 2013, available at *https://www.federalreserve.gov/supervisionreg/srletters/sr1303a1.pdf.* The Guidance was published jointly by the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of

the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than November 15, 2019.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *C&F Financial Corporation, West Point, Virginia;* to acquire Peoples Bankshares, Incorporated, and thereby indirectly acquire Peoples Community Bank, both of Montross, Virginia.

Board of Governors of the Federal Reserve System, October 11, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–22724 Filed 10–17–19; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott- Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED SEPTEMBER 1, 2019 THRU SEPTEMBER 30, 2019

09/03/2019		
20191856	G	CK Williams UK Holdings Limited; Macquarie Infrastructure Partners II International, L.P.; CK Williams UK Holdings Limited.
20191858	G	IIF US Holding 2 LP; El Paso Electric Company; IIF US Holding 2 LP.
20191859	G	Marc Andreessen; Slack Technologies, Inc.; Marc Andreessen.
20191860	G	Benjamin Horowitz; Slack Technologies, Inc.; Benjamin Horowitz.
20191868	G	Glazer's, Inc.; John K. Gillis; Glazer's, Inc.
20191869	G	Russel Metals Inc.; City Pipe & Supply Corp. Employee Stock Ownership Trust; Russel Metals Inc.
20191871	G	Pilot Corporation; NGL Energy Partners LP; Pilot Corporation.
20191877	G	Permira VII L.P. 1; Cambrex Corporation; Permira VII L.P. 1.
20191882	G	Wind Point Partners CV1, LP; Callery Holdings, LLC; Wind Point Partners CV1, LP.
20191889	G	Grain Communications Opportunities Fund II, L.P; Cable Bahamas,Ltd.; Grain Communications Opportunities Fund II, L.P.
20191893	G	GTCR Fund XII/B LP; New York Credit SBIC Fund L.P.; GTCR Fund XII/B LP.
20191896	G	CCP III AIV VII, L.P.; NVX Holdings, Inc.; CCP III AIV VII, L.P.
09/04/2019		
20191862	G	Luminus Energy Partners, Ltd.; Valaris plc; Luminus Energy Partners, Ltd.
09/06/2019		
20191660	G	Visa, Inc.; Matthew Katz; Visa, Inc.
20191863	G	Paul C. Hilal; Aramark; Paul C. Hilal.
20191870	G	Avon Rubber p.l.c.; 3M Company; Avon Rubber p.l.c.
20191887	G	Sterling Construction Company, Inc.; Gregory K. Rogers; Sterling Construction Company, Inc.
20191891	G	AIA Florence Aggregator LLC; LS Power Equity Partners III, L.P.; AIA Florence Aggregator LLC.
09/09/2019		
20191678	G	David and Janet Little; BNC Group LLC; David and Janet Little.
20191897	G	Trident VI Parallel Fund, L.P.; Focus Financial Partners Inc.; Trident VI Parallel Fund, L.P.
20191900	G	Banner Health; NCMC, Inc.; Banner Health.
20191902	G	Wynnchurch Capital Partners IV, L.P.; Susan C. Walsh; Wynnchurch Capital Partners IV, L.P.
20191903	G	Wynnchurch Capital Partners IV, L.P.; Gregory L. Weekes; Wynnchurch Capital Partners IV, L.P.
20191904	G	SK Capital Partners V–A, LP; PolyOne Corporation; SK Capital Partners V–A, LP.
20191906	G	Cerberus Institutional Partners VI, L.P.; Eileen C. Fisher and Mark J. Fisher; Cerberus Institutional Partners VI, L.P.
20191908	G	Milestone Acquisition Holding, LLC; Chassis Acquisition Holding LLC; Milestone Acquisition Holding, LLC.
20191910	G	BCEC Port Holdings (Delaware), LP; Presidio, Inc.; BCEC Port Holdings (Delaware), LP.
20191912	G	Brad H Hall; Senergy Holdings LLC; Brad H Hall.
20191913	G	The Simply Good Foods Company; Voyage Holdings, LLC; The Simply Good Foods Company.
20191915	G	IG True Grit Holdings, LP; IG Igloo Holdings, Inc.; IG True Grit Holdings, LP.
20191917	G	Tenex Capital Partners II, L.P.; Allied Wire & Cable, Inc.; Tenex Capital Partners II, L.P.
20191922	G	Michael S. Dell; Carbon Black, Inc.; Michael S. Dell.
20191925	G	Altas Partners Holdings II LP; The Resolute Fund III, L.P.; Altas Partners Holdings II LP.
20191928	G	AstraZeneca PLC; Swedish Orphan Biovitrum AB (publ); AstraZeneca PLC.
20191931	G	Acuity Brands, Inc.; Sentinel Capital Partners V, L.P.; Acuity Brands, Inc.
20191932	G	Derek P. Maxfield & Shelaine Maxfield; Agnaten SE; Derek P. Maxfield & Shelaine Maxfield.

EARLY TERMINATIONS GRANTED SEPTEMBER 1, 2019 THRU SEPTEMBER 30, 2019—Continued

20191935	G	Golden Gate Capital Opportunity Fund, L.P.; Wicks Capital Partners IV, L.P.; Golden Gate Capital Opportunity Fund, L.P.
		09/10/2019
20191895	G	New Mountain Partners V, L.P.; Specialist Resources Global, Inc.; New Mountain Partners V, L.P.
20191923	G	Verisk Analytics, Inc.; Rothermere Continuation Limited; Verisk Analytics, Inc.
20191924	G	The Charles Schwab Corporation; United Services Automobile Association; The Charles Schwab Corporation.
20191951	G	Crescent Capital BDC, Inc.; Alcentra Capital Corporation; Crescent Capital BDC, Inc.
		09/11/2019
20191946	G	Investment AB Latour; Warren A. & Harriet C. Stephens; Investment AB Latour.
		09/12/2019
20191948	G	Sentinel Capital Partners VI, L.P.; New Era Technology, Inc.; Sentinel Capital Partners VI, L.P.
		09/13/2019
20191955	G	AMCP II Staffing AIV, LP; NMS Fund II, LP; AMCP II Staffing AIV, LP.
20191957	G	AEA Investors Fund VII LP; The BMS Enterprises, Inc.; AEA Investors Fund VII LP.
20191959	G	Liberty Tax, Inc.; Vitamin Shoppe, Inc.; Liberty Tax, Inc.
20191960	G	Le Tote, Inc.; Hudson's Bay Company; Le Tote, Inc.
20191961	G	Bessemer Securities LLC; E. Niles Wilcox; Bessemer Securities LLC.
20191967	G	Warburg Pincus Global Growth, L.P.; Great Hill Equity Partners V, L.P.; Warburg Pincus Global Growth, L.P.
20191968	G	Temenos Group AG; Kony, Inc.; Temenos Group AG.
20191969	G	Pernod Ricard S.A; Castle Brands Inc.; Pernod Ricard S.A.
20191970	G	H.I.G. Capital Partners V, L.P.; Housatonic Equity Investors V, L.P.; H.I.G. Capital Partners V, L.P.
20191971	G	The Veritas Capital Fund VI, L.P.; American Institutes for Research in the Behavorial Sciences; The Veritas Capital Fund VI, L.P.
20191975	G	J2 Acquisition Limited; Lee R. Anderson, Sr.; J2 Acquisition Limited.
20191977	G	Wilaust Holdings Pty Ltd; Todd Pipe Holdings, Inc.; Wilaust Holdings Pty Ltd.
		09/16/2019
20191976	G	The Hershey Trust Company, as Trustee for Milton Hershey Sch; One Brands, LLC; The Hershey Trust Company, as Trustee for Milton Hershey Sch.
20191980	G	TPG Partners VIII, L.P.; Vector Capital IV International, L.P.; TPG Partners VIII, L.P.
		09/17/2019
20191878	G	AI Convoy (Cayman) Limited; Cobham plc; AI Convoy (Cayman) Limited.
20191973	G	Platinum Equity Capital Partners IV, L.P.; Harvest Partners V, L.P.; Platinum Equity Capital Partners IV, L.P.
20191984	G	Permira VI L.P. 1; Axiom Global Inc.; Permira VI L.P. 1.
		09/18/2019
20191947	G	BIF IV UK AIV LP; Helios Aggregator L.P.; BIF IV UK AIV LP.
20191963	G	General Atlantic Partners 100, L.P.; Grove Collaborative, Inc.; General Atlantic Partners 100, L.P.
20191965	G	Wellspring Capital Partners VI, L.P.; HCI Equity Partners IV, L.P.; Wellspring Capital Partners VI, L.P.
20191982	G	Global Diversified Infrastructure (North America) LP; SteelRiver Infrastructure Fund North America LP; Global Diversified Infrastructure (North America) LP.
		09/19/2019
20190289	G	Dairy Farmers of America, Inc.; Agropur Cooperative; Dairy Farmers of America, Inc.
		09/20/2019
20191879	G	Platinum Equity Capital Partners International IV (Cayman); Wesco Aircraft Holdings, Inc.; Platinum Equity Capital Partners International IV (Cayman).
20191983	G	Centerbridge Capital Partners III, L.P.; Pitney Bowes Inc.; Centerbridge Capital Partners III, L.P.
20191985	G	Pembina Pipeline Corporation; Kinder Morgan, Inc.; Pembina Pipeline Corporation.
20191987	G	Sola Ltd, Charitable Trust; Jack Cooper Investments, Inc.; Sola Ltd, Charitable Trust.
20191988	G	TCV IX (A), L.P.; Peloton Interactive, Inc.; TCV IX (A), L.P.
20191989	G	TCV X, L.P.; Peloton Interactive, Inc.; TCV X, L.P.
20191993	G	Susan B. McCollum; James B. Orthwein, Jr.; Susan B. McCollum.
20192000	G	Star Insurance Holdings LLC; Syncora Holdings Ltd.; Star Insurance Holdings LLC.
20192004	G	Stichting Administratiekantoor KINOHOLD (STAK); MJR Group, L.L.C.; Stichting Administratiekantoor KINOHOLD (STAK).
20192006	G	Lifelong Learner Enterprises, LLC; PSI Enterprises, LLC; Lifelong Learner Enterprises, LLC.
20192008	G	Arbor Investments IV, L.P.; Cordia Harrington & Tom Harrington; Arbor Investments IV, L.P.
20192010	G	Tempo Holding Company, LLC; Northgate Luxembourg Holdings GP Sarl; Tempo Holding Company, LLC.
		09/25/2019
20191920	G	Addus HomeCare Corporation; New Capital Partners Private Equity Fund II, L.P.; Addus HomeCare Corporation.

EARLY TERMINATIONS GRANTED SEPTEMBER 1, 2019 THRU SEPTEMBER 30, 2019—Continued

20191990	G	LMI PRS Aggregator, L.P.; Powerhouse Retail Services, LLC; LMI PRS Aggregator, L.P.
20192002	G	Spur Energy Partners Holdings LLC; Concho Resources Inc.; Spur Energy Partners Holdings LLC.
20192012	G	Redwood Ahead Acquisition, LLC; CSC Falcon Holdings, L.P.; Redwood Ahead Acquisition, LLC.
20192013	G	Athene Holding Ltd.; General Electric Company; Athene Holding Ltd.
20192015	G	CSC Falcon Holdings, L.P.; Redwood Ahead Acquisition, LLC; CSC Falcon Holdings, L.P.
20192017	G	CNH Industrial N.V.; Nikola Corporation; CNH Industrial N.V.
20192019	G	John Sherman; David D. Glass & Ruth A. Glass; John Sherman.
20192024	G	Highbridge Multi-Strategy Master Fund, L.P.; Nalpropion Pharmaceuticals, Inc.; Highbridge Multi- Strategy Master Fund, L.P.
09/26/2019		
20191949	G	MasTec, Inc.; QuadGen Wireless Solutions Inc.; MasTec, Inc.
09/27/2019		
20192034	G	Fidelity National Information Services, Inc.; Virtus Partners Holdings, LLC; Fidelity National Information Services, Inc.
20192035	G	Michael Paulus; Prudential Financial, Inc.; Michael Paulus.
20192036	G	Michael Rowell; Prudential Financial, Inc.; Michael Rowell.
20192037	G	Prudential Financial, Inc.; Michael Paulus; Prudential Financial, Inc.
20192038	G	Prudential Financial, Inc.; Michael Rowell; Prudential Financial, Inc.
20192041	G	Cigna Corporation; Verity Solutions Group, Inc.; Cigna Corporation.
20192045	G	DFB Healthcare Acquisitions Corp.; AdaptHealth Holdings LLC; DFB Healthcare Acquisitions Corp.
20192050	G	Stichting Bravak; Charles J. Silver; Stichting Bravak.
20192056	G	Marlin Heritage II, L.P.; John D. Whitlock; Marlin Heritage II, L.P.
20192057	G	Legacy Acquisition Corporation.; Blue Focus Intelligent Communications Group, Ltd.; Legacy Acquisition Corporation.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry (202–326–3100), Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024.

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2019–22737 Filed 10–17–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20–0997; Docket No. CDC–2019–0087]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Standardized National Hypothesis Generating Questionnaire. The information collected will be used to define a core set of data elements to be used for hypothesis generation once a given situation is determined to be a multistate foodborne outbreak investigation.

DATES: CDC must receive written comments on or before December 17, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0087 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Standardized National Hypothesis Generating Questionnaire (OMB Control No. 0920–0997, Exp. 2/29/2020)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is estimated that each year roughly one in six Americans get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate outbreaks, to limit the number of illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the U.S. there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests a revision to this project to collect standardized information, called the Standardized National Hypothesis-Generating Questionnaire (SNHGQ), from individuals who have become ill during a multistate foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and shorten the time to pinpoint how and where contamination events occur.

The Standardized National Hypothesis Generating Questionnaire was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Since the last revision of the SNHGQ in 2016, ORPB has investigated over 700 multistate foodborne and enteric clusters of infection involving over 26,000 ill people. Of which, an outbreak vehicle has been identified in 200 of these investigations. These outbreaks have led to over 50 recalls and countless regulatory actions that have removed millions of pounds of contaminated vehicles out of commerce. In almost all instances, the SNHGQ or iterations of the SNHGQ have been instrumental in the successful investigation of these outbreaks. The questionnaire has allowed investigators to more efficiently and effectively interview ill persons as they are identified. Because these exposures are captured in a common, standard format, we have been able to share and analyze data rapidly across jurisdictional lines. Faster interview response and analysis times have allowed for more rapid epidemiologic investigation and quicker regulatory action, thus helping to prevent thousands of additional illnesses from occurring and spurring industry to adopt and implement new food safety measures in an effort to prevent future outbreaks.

The total estimated annualized burden for the Standardized National Generating Questionnaire is 3,000 hours (approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations with 45 minutes/response). There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Ill individuals identified as part of an outbreak investigation.	Standardized National Hypothesis Generating Questionnaire.	4,000	1	45/60	3,000
Total					3,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–22735 Filed 10–17–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0881; Docket No. CDC–2019–0086]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Data Calls for the Laboratory Response Network.'' This is data collected from its members concerning their capacity to respond to public health emergencies.

DATES: CDC must receive written comments on or before December 17, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0086 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, of the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Data Calls for the Laboratory Response Network (OMB Control No. 0920–0881, Exp. 3/31/2020)—Extension—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39 (Attachment 1), which outlined national anti-terrorism policies and assigned specific missions to Federal Departments and agencies. The Administration has stated that it is the policy of the United States to use all appropriate means, to deter, defeat, and respond to all terrorist attacks on our territory and resources, both with people and facilities. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond quickly to suspected acts of biological, chemical, or radiological terrorism, emerging infectious diseases, and other public health threats and emergencies.

Federal, state and local public health laboratories join the LRN voluntarily. When laboratories join, they assume specific responsibilities and are required to provide facility information to the LRN Program Office at CDC as well as test results for real samples or proficiency tests. LRN laboratories participate in Proficiency Testing Challenges, Exercises and Validation Studies each year. LRN information collection is covered by OMB Control No. 0920–0852.

CDC may conduct a Special Data Call to obtain additional information from LRN laboratories regarding biological terrorism or emerging infectious disease preparedness. Although the LRN Program Office at CDC has an extensive database of information regarding all network members, LRN Special Data Calls are sometimes needed to address issues concerning the response capabilities of member facilities for priority threat agents or to assess the network's ability to respond to new emerging threats. Special Data Calls may be conducted via broadcast email that asks respondents to send information via email to the LRN Help Desk or through online survey tools (*i.e.,* Survey Monkey) which require respondents to go to a web link and answer a series of questions (Attachment 3). This request for extension is a generic clearance that is necessary for any impromptu data calls that are needed.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public Health Laboratorians	Special Data Call	136	1	30/60	68
Total					68

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–22732 Filed 10–17–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10344]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

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

ACTION: Correction of notice.

SUMMARY: This document corrects the information provided for [Document Identifier: CMS–10344] titled ''Elimination of Cost-Sharing for Full Benefit Dual Eligible Individuals Receiving Home and Community-Based Services.''

FOR FURTHER INFORMATION CONTACT: William N. Parham, III, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In the September 25, 2019, issue of the **Federal Register** (84 FR 50453), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the information collection request identified under CMS–10344, OMB control number 0938–1127, and titled ''Elimination of Cost-Sharing for Full Benefit Dual Eligible Individuals Receiving Home and Community-Based Services.''

II. Explanation of Error

In the September 25, 2019, notice, the information provided in the first column, at the end of the second paragraph, on page 50455, was published with incorrect information in the ''*For policy questions*'' section. This notice corrects the language found in the ''*For policy questions*'' section in the first column, at the end of the second paragraph, on page 50455 of the September 25th notice. All of the other information contained in the September 25, 2019, notice is correct. The related public comment period remains in effect and ends November 25, 2019.

III. Correction of Error

In FR Doc. 2019–20858 of September 25, 2019 (84 FR 50453), page 50455, the language in the first column, at the end of the second paragraph begins with ''[For policy questions and ends with ''at 410–786–0668],'' is corrected to read as follows:

[For policy questions regarding this collection contact Roland O. Herrera at 410–786–0668.)]

Dated: October 11, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–22726 Filed 10–17–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10227, CMS–10243, CMS–10316 and CMS–10716]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 17, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10227 PACE State Plan Amendment Preprint
CMS–10243 Testing Experience and Functional Tools: Functional Assessment Standardized Items (FASI) Based on the CARE Tool
CMS–10316 Implementation of the Medicare Prescription Drug Plan (PDP) and Medicare Advantage (MA) Plan Disenrollment Reasons Survey
CMS–10716 Applicable Integrated Plan Coverage Decision Letter

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* PACE State Plan Amendment Preprint; *Use:* If a state elects to offer PACE as an optional Medicaid benefit, it must complete a state plan amendment preprint packet described as ''Enclosures 3, 4, 5, 6, and 7.'' CMS will review the information provided in order to determine if the state has properly elected to cover PACE services as a state plan option. In the event that the state changes something in the state plan, only the affected page must be updated. *Form Number:* CMS–10227 (OMB control number: 0938–1027); *Frequency:* Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 7; *Total Annual Responses:* 2; *Total Annual Hours:* 140. (For policy questions regarding this collection contact Angela Cimino at 410–786–2638.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Testing Experience and Functional Tools: Functional Assessment Standardized Items (FASI) Based on the CARE Tool; *Use:* In 2012, CMS funded a project entitled, Technical Assistance to States for Testing Experience and Functional Tools (TEFT) Grants. One component of this demonstration is to amend and test the reliability of a setting-agnostic, interoperable set of data elements, called ''items,'' that can support standardized assessment of individuals across the continuum of care. Items that were created for use in post-acute care settings using the Continuity Assessment Record and Evaluation (CARE) tool have been adopted, modified, or supplemented for use in community-based long-term services and supports (CB–LTSS) programs. This project will test the reliability and validity of the function-related assessment items, now referred to as Functional Assessment Standardized Items (FASI), when applied in community settings, and in various populations: Elders (65 years and older); younger adults (18–64) with physical disabilities; and adults of any age with intellectual or developmental disabilities, with severe mental illness, or with traumatic brain injury.

Individual-level data will be collected two times using the TEFT FASI Item Set. The first data collection effort will collect data that can be analyzed to evaluate the reliability and validity of the FASI items when used with the five waiver populations. Assessors will conduct functional assessments in client homes using the TEFT FASI Item Set. Changes may be recommended to individual TEFT FASI items, to be made prior to releasing the TEFT FASI items for use by the states. The FASI Field Test Report will be released to the public.

The second data collection will be conducted by the states to demonstrate their use of the FASI data elements. The assessment data could be used by the states for multiple purposes. They may use the standardized items to determine individual eligibility for state programs, or to help determine levels of care within which people can receive services, or other purposes. In the second round of data collection, states will demonstrate their proposed uses, manage their FASI data collection and conduct their own analysis, to the extent they propose to do such tasks. The states have been funded under the demonstration grant to conduct the round 2 data collection and analysis. These states will submit reports to CMS describing their experience in the Round 2 data collection, including the items they collected, how they planned to use the data, and the types of challenges and successes they encountered in doing so. The reports may be used by CMS in their evaluation of the TEFT grants. *Form Number:* CMS–10243 (OMB control number: 0938–1037); *Frequency:* On occasion; *Affected Public:* Individuals and Households; *Number of Respondents:* 5,650; *Total Annual Responses:* 5,650; *Total Annual Hours:* 2,825. (For policy questions regarding this collection contact Kerry Lida at 410–786–4826.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Implementation of the Medicare Prescription Drug Plan (PDP) and Medicare Advantage (MA) Plan Disenrollment Reasons Survey; *Use:* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provides a requirement to collect and report performance data for Part D prescription drug plans. Specifically, the MMA under Sec. 1860D–4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys regarding the PDP and MA contracts pursuant to section 1860D–4(d).

The Centers for Medicare & Medicaid Services (CMS) developed the Disenrollment Survey to capture the reasons for disenrollment at a time that is as close as possible to the actual date of disenrollment. Through this survey, CMS seeks to: (1) Obtain information about beneficiaries' expectations relative to provided benefits and services (for both MA and PDPs) and (2) determine the reasons that prompt beneficiaries to voluntarily disenroll. It is important to include such information from disenrollees as CMS assesses plan performance, because plan disenrollment can be a broad indicator of beneficiary dissatisfaction with some aspect of plan services, such as access to care, customer service, cost, benefits provided, or quality of care. Information obtained from the Disenrollment Survey also supports the quality improvement efforts of individual plans and provides data to assist consumer choice through use of the Medicare Plan Finder website.

The survey results are an important plan monitoring tool for CMS to ensure that Medicare beneficiaries are receiving high quality services from contracted providers. CMS uses information from the survey to track changes in the

reasons Medicare beneficiaries cite for disenrolling to monitor improvements/declines over time nationally and at the plan level. CMS also uses the disenrollment survey results to support the quality improvement efforts of individual plans, by providing plans with a detailed, annual report showing the reasons disenrollees cited for voluntarily leaving the plan and comparing the plan's scores to regional and national benchmarks. Additionally, CMS uses the plan-specific results of the survey to provide Medicare beneficiaries with information (*i.e.,* reasons cited for disenrolling from a plan and the frequency with which disenrollees cite each of the reasons) to assist beneficiaries with their annual consumer choice of plans. *Form Number:* CMS–10316 (OMB control number: 0938–1113); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 43,872; *Total Annual Responses:* 43,872; *Total Annual Hours:* 8,774. (For policy questions regarding this collection contact Beth Simon at 415–744–3780.)

4. *Type of Information Collection Request:* New Collection (Request for a new OMB control number); *Title of Information Collection:* Applicable Integrated Plan Coverage Decision Letter; *Use:* The Bipartisan Budget Act (BBA) of 2018 directed the establishment of procedures to unify Medicare and Medicaid grievance and appeals procedures to the extent feasible for dual eligible special needs plans (D–SNPs) beginning in 2021. On April 16, 2019, CMS finalized rules (hereafter referred to as the April 2019 final rule) to implement these new statutory provisions.[1] As a result of these regulations, starting in 2021, a subset of full integrated dual special needs plans (FIDE SNPs) and highly integrated dual special needs plans (HIDE SNPs) will need to unify and update appeals and grievance procedures, including how enrollees are notified of their appeal rights.

Applicable integrated plans as defined at § 422.561 are required to issue form CMS–10716 when a request for either a medical service or payment covered under the Medicare or Medicaid benefit is denied in whole or in part. The notice explains why the plan denied the service or payment and informs the plan enrollees of their appeal rights.

The ''Applicable Integrated Plan Coverage Decision Letter'' or the ''coverage decision letter'', which will be issued as a result of an integrated organization determination under 42 CFR 422.631 when an applicable integrated plan reduces, stops, suspends, or denies, in whole or in part, a request for a service/item (including a Part B drug) or a request for payment of a service/item (including a Part B drug) the member has already received. ''Applicable integrated plans,'' hereinafter referred to as ''plans'', are defined at 42 CFR 422.561 as FIDE SNPs or HIDE SNPs with exclusively aligned enrollment, where state policy limits the D–SNP's membership to a Medicaid managed care plan offered by the same organization. Applicable integrated plans will issue the coverage decision letter starting in CY 2021 in place of the Notice of Denial of Medical Coverage (or Payment) (NDMCP) form (CMS–10003) as part of requirements to unify appeals and grievance processes. All other Medicare Advantage (MA) plans will continue to use the NDMCP form (CMS–10003). *Form Number:* CMS–10716 (OMB control number: 0938-New); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 693; *Total Annual Responses:* 693; *Total Annual Hours:* 116. (For policy questions regarding this collection contact Marna Metcalf Akbar at 410–786–8251.)

Dated: October 11, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–22718 Filed 10–17–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–576A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 18, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or

reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization's (OPOs) Health Insurance Benefits Agreement and Supporting Regulations; *Use:* The Medicare and Medicaid Programs final conditions for coverage for Organ Procurement Organizations (OPOs) require OPOs to sign agreements with the Center for Medicare and Medicaid Services (CMS) in order to be reimbursed and perform their services. The information provided on this form serves as a basis for continuing the agreements with CMS and the OPOs for participation in the Medicare and Medicaid programs for reimbursement of service. *Form Number:* CMS–576A (OMB Control Number: 0938–0512); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 58; *Total Annual Responses:* 58; *Total Annual Hours:* 29. (For policy questions regarding this collection contact Melissa Rice at 410–786–3270.)

Dated: October 11, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–22715 Filed 10–17–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Office of Community Services (OCS) Community Economic Development (CED) Standard Reporting Format (OMB #0970–0386)

AGENCY: Office of Community Services, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS) is requesting a three-year extension of the semi-annual reporting format for Community Economic Development (CED) grantees, the Performance Progress Report (PPR), which collects information concerning the outcomes and management of CED projects (OMB #0970–0386, expiration 6/30/2020). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OCS will continue collecting key information about projects funded through the CED program. The legislative requirement for this program is in Title IV of the Community Opportunities, Accountability and Training and Educational Services Act (COATS Human Services Reauthorization Act) of October 27, 1998, Public Law 105–285, section 680(b) as amended. The PPR collects information concerning the outcomes and management of CED projects. OCS will use the data to critically review the overall design and effectiveness of the program.

The PPR will continue to be administered to all active grantees of the CED program. Grantees will be required to use this reporting tool for their semi-annual reports to be submitted twice a year. The current PPR replaced both the annual questionnaire and other semi-annual reporting formats, which resulted in an overall reduction in burden for the grantees while significantly improving the quality of the data collected by OCS. OCS seeks to renew this PPR to continue to collect quality data from grantees. To ensure the burden on grantees is not increased, but that the information collected demonstrates the full impact of the program, OCS has conducted an in-depth review of the forms and requests no changes to the PPR.

Respondents: Active CED Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
PPR for Current OCS–CED Grantees	129	2	1.5	387

Estimated Total Annual Burden Hours: 387.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 680(a)(2) of the Community Services Block Grant (CSBG) Act, 42 U.S.C. 9921.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–22741 Filed 10–17–19; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3030]

Site Visit Training Program for Office of Pharmaceutical Quality Staff; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research (CDER) is announcing an invitation for participation in the Fiscal Year (FY) 2020 CDER Office of Pharmaceutical Quality (OPQ) Staff Experiential Learning Site Visit Program. The purpose of this document is to invite pharmaceutical companies interested in participating in this program to submit a site visit proposal to CDER's OPQ.

DATES: Submit either electronic or written proposals for participation in this program by November 18, 2019. See **SUPPLEMENTARY INFORMATION** for information on what to include in such proposals.

ADDRESSES: If your facility is interested in offering a site visit, submit either an electronic proposal to *CDEROPQSiteVisits@fda.hhs.gov* or a written proposal to Janet Wilson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4642, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Janet Wilson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4642, Silver Spring, MD 20993–0002, 240–402–3969, email: *CDEROPQSiteVisits@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A critical part of the commitment by CDER to make safe and effective high-quality drugs available to the American public is gaining an understanding of all aspects of a drug's development and commercial life cycle, including the variety of drug manufacturing operations. To support this commitment, CDER has initiated various training and development programs including the FY2020 Experiential Learning Site Visit program. This site visit program is designed to offer experiential and firsthand learning opportunities that will provide OPQ staff with a better understanding of the pharmaceutical industry and its operations, as well as the challenges that impact a drug's developmental program and commercial life cycle. The goal of these visits is to enhance OPQ staff exposure to the drug development and manufacturing processes in industry; therefore, a tour of pharmaceutical company facilities, including manufacturing and laboratory operations, is an integral part of the experience.

II. The Site Visit Program

In this site visit program, groups on average of 15 to 20 OPQ staff who have experience in a variety of backgrounds, including science, medicine, statistics, manufacturing, engineering, testing, and project management will observe operations of commercial manufacturing, pilot plants (if applicable), and testing over a 1- to 2-day period. To facilitate the learning process for OPQ staff, overview presentations by industry related to drug development, manufacturing, and testing may be included.

OPQ encourages companies engaging in the development and manufacturing of both active pharmaceutical ingredients (small and large molecules) and drug products to respond. Please note that this site visit program is not intended to supplement or replace a regulatory inspection, *e.g.,* a preapproval inspection, pre-license inspection, or a surveillance inspection.

The OPQ staff participating in this program will benefit by gaining a better understanding of current industry practices, processes, and procedures. Participating sites will have an opportunity to showcase their technologies and actual manufacturing and testing facilities.

Although observation of all aspects of drug development and production would be beneficial to OPQ staff, OPQ has identified a number of areas of particular interest to its staff. The following list identifies some examples of these areas but is not intended to be exhaustive, mutually exclusive, or to limit industry response:

- Drug products
  - Solutions, suspensions, emulsions, and semisolids
  - Modified- and immediate-release formulations
  - Drug-device combination products (*e.g.,* inhalation products, transdermal systems, implants intended for drug delivery, and pre-filled syringes)
- Active pharmaceutical ingredients
  - Made entirely by chemical synthesis
  - Derived from a biological source (*e.g.,* fermentation, mammalian cell culture)
- Design, development, manufacturing, and controls
  - Engineering controls for aseptic processes
  - Novel delivery technologies
  - Hot melt extrusion
  - Soft-gel encapsulation
  - Lyophilization
  - Blow-Fill-Seal and isolators
  - Spray-drying
  - Process analytical technology, measurement systems, and real-time release testing
- Emerging technologies
  - Continuous manufacturing
  - 3-dimensional printing
  - Nanotechnology

III. Site Selection

Selection of potential facilities will be based on the priorities developed for OPQ staff training, the facility's current compliance status with FDA, and in consultation with the appropriate FDA district office. All travel expenses associated with this program will be the responsibility of OPQ; therefore, selection will be based on the availability of funds and resources for the fiscal year. OPQ will not provide financial compensation to the pharmaceutical site as part of this program.

IV. Proposals for Participation

Companies interested in offering a site visit or learning more about this site visit program should respond by submitting a proposal directly to Janet Wilson (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). To aid in OPQ's site selection and planning, your proposal should include the following information:

- A contact person
- The site visit location or locations
- A Facility Establishment Identifier (FEI) and any applicable Data Universal Numbering System (DUNS) numbers
- The maximum number of FDA staff that can be accommodated during a site visit (maximum of 20)
- A proposed agenda outlining the learning objectives and associated activities for the site visit
- The maximum number of site visits (no more than two) that your site would be willing to host by the close of the government fiscal year (September 30, 2020)
- The proposed dates for each site visit

Please note that the requested proposed agenda will be reviewed to determine the educational benefit to OPQ in conducting the visit, and selected sites may be asked to refine the

agenda to maximize the educational benefit. After a site is selected, OPQ will communicate with the contact person for the site to determine the actual dates for the visit. Proposals submitted without this minimum information will not be considered. Based on response rate and type of responses, OPQ may or may not consider alternative pathways to meeting our training goals.

Dated: October 11, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22767 Filed 10–17–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0444]

Health Canada and United States Food and Drug Administration Joint Regional Consultation on the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a regional public meeting entitled ''Health Canada and U.S. Food and Drug Administration Joint Regional Consultation on the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH).'' The purpose of the public meeting is to provide information and solicit public input on the current activities of the ICH, as well as the upcoming ICH Assembly Meeting and the Expert Working Group Meetings in Singapore scheduled for November 16 through November 20, 2019. The topics to be addressed at the public meeting are the current ICH guideline topics under development that will be discussed at the forthcoming ICH Assembly Meeting in Singapore.

DATES: The public meeting will be held on Monday, November 4, 2019, from 1 p.m. to 4 p.m. Submit either electronic or written comments on this public meeting by Friday, November 8, 2019. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at Sir Frederick G. Banting Research Centre, 251 Sir Frederick Banting Dr., Ottawa, ON K1Y 0M1, Canada. The meeting will also be broadcast on the web, allowing participants to join in person OR via the web.

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 November 8, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time on November 8, 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 in the sections below (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–2019–N–0444 for ''Health Canada and U.S. Food and Drug Administration Joint Regional Consultation on the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; Public Meeting; Request for Comments.'' 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: William Lewallen, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6304, Silver Spring, MD 20993–0002, 301–796–3810, *William.Lewallen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ICH, formerly known as the International Conference on Harmonisation, was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory requirements for safety and effectiveness. One of the goals of harmonization is to identify and then reduce regional differences in technical regulatory requirements for pharmaceutical products while preserving a consistently high standard for drug efficacy, safety, and quality. In 2015, the ICH was reformed to establish ICH as a true global initiative that expands beyond the previous ICH members. More involvement from regulators around the world is expected, as they join counterparts from Europe, Japan, the United States, Canada, and Switzerland as ICH observers and regulatory members. Expanded involvement is also anticipated from global regulated pharmaceutical industry parties, joining as ICH observers and industry members. The reforms build on a 25-year track record of successful delivery of harmonized guidelines for global pharmaceutical development, and their regulation.

ICH guidelines are developed following a five-step process. In Step 1, experts from the different ICH regions work together to prepare a consensus draft of the Step 1 Technical Document. The Step 1 Technical Document is submitted to the ICH Assembly to request endorsement under Step 2a of the process. Step 2b is a ''Regulators only'' step in which the ICH regulatory members review the Step 2a Final Technical Document and take any actions, which might include revisions that they deem necessary, to develop the draft ''Guideline.'' Step 3 of the process begins with the public consultation process conducted by each of the ICH regulatory members in their respective regions, and this step concludes with completion and acceptance of any revisions that need to be made to the Step 2b draft guideline in response to public comments. Adoption of the new guideline occurs in Step 4. Following adoption, the harmonized guideline moves to Step 5, the final step of the process when it is implemented by each of the regulatory members in their respective regions. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the ICH regions since 1990. More information on the current ICH process and structure can be found at the following website: *http://www.ich.org.* (FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.)

The topics for discussion at this public meeting include the current guidelines under development under the ICH.

II. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting must register online by October 28, 2019. To register for the public meeting, please visit the following website: *https://www.eventbrite.ca/e/health-canada-us-fda-joint-consultation-on-ich-tickets-63004743885.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by October 28, 2019, midnight Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization.

The agenda for the public meeting will be made available on the internet at: *http://wcms-internet.fda.gov/drugs/news-events-human-drugs/health-canada-and-united-states-food-and-drug-administration-joint-regional-consultation* approximately 2 weeks in advance of the meeting.

If you need special accommodations due to a disability, please contact William Lewallen (see **FOR FURTHER INFORMATION CONTACT**) no later than October 21, 2019.

Requests for Oral Presentations: If you wish to make a presentation during the public comment session, please contact William Lewallen (see **FOR FURTHER INFORMATION CONTACT**) no later than October 28, 2019. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. If selected for presentation, any presentation materials must be emailed to William Lewallen (see **FOR FURTHER INFORMATION CONTACT**) no later than October 28, 2019. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: To register to attend via webcast, please visit the following website: *https://www.eventbrite.ca/e/health-canada-us-fda-joint-consultation-on-ich-tickets-63004743885.*

Dated: October 11, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22760 Filed 10–17–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–N–0370, FDA–2013–N–0065, FDA–2012–N–0427, FDA–2012–N–0536, FDA–2012–N–0873, FDA–2015–N–3662, FDA–2012–N–0976, FDA–2013–N–0297, FDA–2011–D–0893, and FDA–2019–N–1265]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Export of Medical Devices; Foreign Letters of Approval	0910–0264	8/31/2022
Registration of Food Facilities	0910–0502	8/31/2022
Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002	0910–0510	8/31/2022
Medical Device User Fee Cover Sheet—Form FDA 3601	0910–0511	8/31/2022
Bar Code Label Requirement for Human Drug Products and Biological Products	0910–0537	8/31/2022
Guidance on Reagents for Detection of Specific Novel Influenza A Viruses	0910–0584	8/31/2022
Guidance: Emergency Use Authorization of Medical Products and Related Authorities	0910–0595	8/31/2022
Production, Storage, and Transportation of Shell Eggs (preventing *Salmonella* Enteritidis (SE))	0910–0660	8/31/2022
Center for Devices and Radiological Health Appeals Processes	0910–0738	8/31/2022
Food Labeling: Nutrition Facts Label and Supplement Facts Labels	0910–0813	8/31/2022

Dated: October 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–22803 Filed 10–17–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Brain Tumors, Neuro-sequalae of Cancer Treatments and Neurodegeneration.

Date: November 5, 2019.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892, 301–827–7238 *zhaow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders and Related Neurosciences.

Date: November 7–8, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott-Residence Inn Bethesda, 7355 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vilen A. Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–094: Maximizing Investigators' Research Award (R35).

Date: November 12, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–827–7088, *methode.bacanamwo@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22709 Filed 10–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel PAR–16–412: NIAID Resource-Related Research Projects (R24).

Date: November 13, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Brighenti, Ph.D., Scientific Review Officer, Program Management and Operations Branch, Scientific Review Program, National Institute for Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, RM 3E71, Rockville, MD 20852, 301–761–3100, *cruza@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 11, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22710 Filed 10–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 5–6, 2020.

Open: February 05, 2020, 12:30 p.m. to 6:00 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

Closed: February 06, 2020, 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov*.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 27–28, 2020.

Open: May 27, 2020, 12:30 p.m. to 6:00 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments. And Overview of the NINDS Intramural Program.

Closed: May 28, 2020, 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Closed: May 28, 2020, 12:30 p.m. to 1:00 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Activities, National Institute of Neurological, Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 9–10, 2020.

Open: September 09, 2020, 12:30 p.m. to 6:00 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892.

Closed: September 10, 2020, 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Activities, National Institute of Neurological, Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 11, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22712 Filed 10–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Pain Research Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Pain Research Coordinating Committee.

Date: November 18, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: The meeting will include discussions of committee business items including information about the NIH HEAL Initiative and an update on the Pain Management Best Practices Interagency Task Force.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Room 610, 35 Convent Drive, Bethesda, MD 20892.

Webcast Live: http://videocast.nih.gov/.

Deadlines: Submission of intent to submit written/electronic statement for comments: Monday, November 4, 2019. Submission of written/electronic statement for oral comments: Monday, November 11, 2019.

Contact Person: Linda L. Porter, Ph.D., Director, Office of Pain Policy & Planning, Office of the Director, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892, Phone: (301) 451–4460, Email: *Linda.Porter@nih.gov*.

Any member of the public interested in submitting written comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Monday, November 4, 2019, with their request. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral statement/comments including a brief description of the organization represented by 5:00 p.m. ET on Monday, November 11, 2019. Statements submitted will be shared with the committee members and become a part of the public record.

The meeting will be open to the public and accessible by live Webcast (*videocast.nih.gov*). Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least seven days prior to the meeting.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: October 11, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22713 Filed 10–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Research Project Grant Review.

Date: November 5, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health, National Institute on Deafness and Other Communication Disorders, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 11, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22711 Filed 10–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of open federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) National Advisory Council (NAC) will meet in person on November 5–7, 2019, in Washington, DC. The meeting will be open to the public.

DATES: The NAC will meet Tuesday, November 5, 2019, from 8:00 a.m. to 5:00 p.m.; Wednesday, November 6, 2019, from 8:30 a.m. to 5:00 p.m.; and Thursday, November 7, 2019, from 8:30 a.m. to 1:00 p.m. Eastern Standard Time. Please note that the meeting may close early if the NAC has completed its business.

ADDRESSES: The meeting will be held at The National Association of Counties located at 660 North Capitol Street NW, Washington, DC 20001. It is recommended that attendees register with FEMA by October 25, 2019, by providing their name, telephone number, email address, title, and organization to the person listed in the **FOR FURTHER INFORMATION CONTACT** caption, below.

For information on facilities or services for people with disabilities and others with access and functional needs (including people who use mobility aids, require medication or portable medical equipment, use service animals, need information in alternate formats, or rely on personal assistance services), or to request assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** caption, below, as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the NAC. The ''Agenda'' section below outlines these issues. The full agenda and any related documents for this meeting will be posted by Friday, November 1, 2019, on the NAC website at *http://www.fema.gov/national-advisory-council.* Written comments must be submitted and received by 5:00 p.m. Eastern Daylight Time on November 1, 2019, identified by Docket ID FEMA–2007–0008, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (540) 504–2331. Please include a cover sheet addressing the fax to ATTN: Jasper Cooke.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW, Room 8 NE, Washington, DC 20472–3100.

Instructions: All submissions must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received, including any personal information provided, will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the NAC, go to *http://www.regulations.gov,* and search for Docket ID FEMA–2007–0008.

A public comment period will be held on Wednesday, November 6, 2019, from 1:00 p.m. to 1:15 p.m. Eastern Standard Time. All speakers must limit their comments to 5 minutes. Comments should be addressed to the NAC. Any comments not related to the agenda topics will not be considered by the NAC. To register to make remarks during the public comment period, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption by November 1, 2019. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Jasper Cooke, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184, telephone (202) 646–2700, fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov.* The NAC website is: *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal

Advisory Committee Act, 5 U.S.C. Appendix.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates input from State, local, and Tribal governments, and the private sector in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from State, local, and Tribal governments, the private sector, and nongovernmental organizations.

Agenda: On Tuesday, November 5, 2019, the three permanent and one ad-hoc NAC subcommittees (Federal Insurance and Mitigation Subcommittee, Preparedness and Protection Subcommittee, Response and Recovery Subcommittee, and Marginalized, Tribal, Rural and Small Communities Subcommittee) will discuss and deliberate on their potential recommendations and, based on group discussion, the NAC will vote to make recommendations as appropriate to the FEMA Administrator. Potential recommendation topics include (1) closing the insurance gap, (2) encouraging adoption of building codes, (3) building a culture of financial preparedness, and (4) the Building Resilient Infrastructure and Communities program.

On Wednesday, November 6, 2019, the NAC will discuss process changes occurring in the next year of NAC operations, begin to discuss charges for the subcommittees in the coming year, and will also hear about strategic priorities from the FEMA Administrator.

On Thursday, November 7, 2019, the NAC will review potential topics for research before the next in-person meeting, discuss recent disasters, review agreed upon recommendations, and confirm charges for the subcommittees.

The full agenda and any related documents for this meeting will be posted by Friday, November 1, 2019, on the NAC website at *http://www.fema.gov/national-advisory-council.*

Dated: October 11, 2019.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–22731 Filed 10–17–19; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2019–N140; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Oil Spill Draft Phase 2 Restoration Plan 1.2 and Environmental Assessment: Barataria Basin Ridge and Marsh Creation Project Spanish Pass Increment and Lake Borgne Marsh Creation Project Increment One; Louisiana Trustee Implementation Group

AGENCY: Department of the Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared a *Louisiana Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #1.2: Barataria Basin Ridge and Marsh Creation Project Spanish Pass Increment and Lake Borgne Marsh Creation Project Increment One* (Phase 2 RP/EA #1.2), proposing construction activities for the restoration of wetlands, coastal, and nearshore habitats injured in the Louisiana Restoration Area as a result of the *Deepwater Horizon* (DWH) oil spill. The two projects are components of larger marsh restoration strategies, and were approved for engineering and design (E&D) in a 2017 restoration plan entitled *Louisiana Trustee Implementation Group Final Restoration Plan #1: Restoration of Wetlands, Coastal, and Nearshore Habitats; Habitat Projects on Federally Managed Lands; and Birds* (Phase 1 RP #1). The Phase 2 RP/EA #1.2 analyzes design alternatives for the two projects, and proposes a preferred design alternative for construction of each. We invite comments on the draft Phase 2 RP/EA #1.2.

DATES:

Submitting Comments: We will consider public comments on the draft Phase 2 RP/EA #1.2 received on or before November 18, 2019.

Public Webinar: The LA TIG will host a public webinar on October 28, 2019, at 4:00 p.m. Central Standard Time. The public may register for the webinar at *https://attendee.gotowebinar.com/register/4633351197181038605.* After registering, participants will receive a confirmation email with instructions for joining the webinar. The presentation material will be posted on the web shortly after the webinar is concluded at *https://www.gulfspill restoration.noaa.gov/restoration-areas/louisiana.*

ADDRESSES:

Obtaining Documents: You may download the draft Phase 2 RP/EA #1.2 from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon*
- *https://www.gulfspill restoration.noaa.gov/restoration-areas/louisiana*

Alternatively, you may request a CD of the draft Phase 2 RP/EA #1.2 (see **FOR FURTHER INFORMATION CONTACT**). A hard copy of the Phase 2 RP/EA #1.2 is also available for review during the public comment period at repositories located across the region. Locations are listed in the following table.

Library	Address	City	Zip
St. Tammany Parish Library	310 W 21st Avenue	Covington	70433
Terrebonne Parish Library	151 Library Drive	Houma	70360
New Orleans Public Library, Louisiana Division	219 Loyola Avenue	New Orleans	70112
East Baton Rouge Parish Library	7711 Goodwood Boulevard	Baton Rouge	70806
Jefferson Parish Library, East Bank Regional Library.	4747 W Napoleon Avenue	Metairie	70001
Jefferson Parish Library, West Bank Regional Library.	2751 Manhattan Boulevard	Harvey	70058
Plaquemines Parish Library	8442 Highway 23	Belle Chasse	70037
St. Bernard Parish Library	1125 E St. Bernard Highway	Chalmette	70043
St. Martin Parish Library	201 Porter Street	St. Martinville	70582
Alex P. Allain Library	206 Iberia Street	Franklin	70538
Vermilion Parish Library	405 E St. Victor Street	Abbeville	70510
Martha Sowell Utley Memorial Library	314 St. Mary Street	Thibodaux	70301
South Lafourche Public Library	16241 E Main Street	Cut Off	70345

Library	Address	City	Zip
Calcasieu Parish Public Library Central Branch	301 W Claude Street	Lake Charles	70605
Iberia Parish Library	445 E Main Street	New Iberia	70560
Mark Shirley, LSU AgCenter	1105 West Port Street	Abbeville	70510

Submitting Comments: You may submit comments on the draft Phase 2 RP/EA #1.2 by one of the following methods:

- *Via the Web: https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. To be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.
- *During the public webinar:* Written comments may be provided by the public during the webinar. Webinar information is provided in **DATES**.

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, via email at *nanciann_regalado@fws.gov,* via telephone at 678–296–805, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States* v. *BPXP et al.,* Civ. No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the Consent Decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the LA TIG. The LA TIG is composed of the following Trustees: State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources; DOI; NOAA; EPA; and USDA.

Background

The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. A TIG may propose conceptual projects to fund for an information-gathering planning phase, such as E&D, in a restoration plan (phase 1). This would allow the TIG to develop information needed to fully consider a subsequent implementation phase of that project in a later restoration plan (phase 2). In the final Phase 1 RP #1, the LA TIG selected six conceptual projects for E&D, using funds from the wetlands, coastal, and nearshore habitats restoration type, as provided for in the DWH Consent Decree. Two of those projects selected to undergo E&D are the Barataria Basin Ridge and Marsh Creation Project Spanish Pass Increment (Spanish Pass project) and the Lake Borgne Marsh Creation Project Increment One (Lake Borgne project). The design alternatives developed during E&D are currently at a stage where proposed construction activities may be analyzed under OPA and NEPA. Therefore, in the draft Phase 2 RP/EA #1.2, the Louisiana TIG is proposing to finalize and implement their preferred design alternatives to construct the Spanish Pass and Lake Borgne projects.

Overview of the LA TIG Draft Phase 2 RP/EA #1.2

The draft Phase 2 RP/EA #1.2 is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–508, the Final PDARP/PEIS, and the Consent Decree. The Phase 2 RP/EA #1.2 provides OPA and NEPA analyses for a reasonable range of design alternatives for the Spanish Pass and Lake Borgne projects, and identifies the LA TIG's preferred design alternatives.

The proposed Spanish Pass project is a component of an overall large-scale restoration strategy for the Barataria Basin that would reestablish, through multiple increments, ridge and intertidal marsh habitats degraded due to sea level rise, land subsidence, diminished sediment supply, and storm events. The total cost for the proposed

Spanish Pass project is approximately $99,396,000.

The proposed Lake Borgne project is a component of an overall large-scale restoration strategy for the southwestern shoreline of Lake Borgne that would reestablish, through multiple increments, the bay rim and intertidal marsh habitat. The estimated total cost for this proposed increment is $108,814,700.

Next Steps

As described above in **DATES**, the Trustees will host a public webinar to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing a final Phase 2 RP/EA #1.2.

Public Availability of Comments

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.

Administrative Record

The documents comprising the Administrative Record for the Phase 2 RP/EA #1.2 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

Mary Josie Blanchard,

Director of Gulf of Mexico Restoration, Department of Interior.

[FR Doc. 2019–22778 Filed 10–17–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X 1109AF LLUT930000 LI6100000.DQ0000.LXSSJ0640000]

Notice of Error in Proposed Resource Management Plans and Associated Environmental Impact Statement for the Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument That Are Excluded From the Boundaries; New Protest Period, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of error and protest period.

SUMMARY: The Bureau of Land Management (BLM) Grand Staircase-Escalante National Monument (GSENM) and Kanab Field Office have published modified Proposed Resource Management Plans (RMPs) and an associated Environmental Impact Statement (EIS) for the GSENM-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal lands previously included in the Monument that are excluded from the boundaries, referred to as the Kanab-Escalante Planning Area (KEPA). This action corrects an error related to Appendix W within the Proposed RMPs and Final EIS that the BLM had published on August 23, 2019. The BLM is modifying the Proposed RMPs and Final EIS to respond to certain public comments that the BLM received during the Draft EIS public-comment period that were not addressed in the Appendix W-Comment Analysis Report. By this Notice, the BLM is announcing the opening of a protest period concerning the modified Proposed RMPs and Final EIS.

DATES: The BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMPs and Final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability for the modified Proposed RMPs and Final EIS in the **Federal Register**.

ADDRESSES: The modified Proposed RMPs and Final EIS and accompanying errata sheet are available on the BLM ePlanning website at *https://go.usa.gov/xVCGJ.* Click the ''Documents and Report'' link on the left side of the screen to find the electronic versions of these materials. Hard copies of the modified Proposed RMPs and Final EIS are available for public inspection at the Kanab Field Office, 669 South Highway 89A, Kanab, UT 84741.

Instructions for filing a protest with the BLM regarding the Proposed RMPs may be found online at *https://www.blm.gov/filing-a-plan-protest* and at 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT: Harry Barber, Monument Manager, telephone (435) 644–1200; address 669 S Hwy 89A, Kanab, UT 84741; email *BLM_UT_CCD_monuments@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Barber during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On December 4, 2017, President Donald J. Trump signed Presidential Proclamation 9682 modifying the boundaries of the GSENM to exclude from designation and reservation approximately 861,974 acres of land. Lands that remain part of the GSENM are included in three units, known as the Grand Staircase, Kaiparowits, and Escalante Canyons Units, and are reserved for the care and management of the objects of historic and scientific interest described in Proclamation 6920, as modified by Proclamation 9682. Lands that are excluded from the Monument boundaries are now referred to as the KEPA and are managed in accordance with the BLM's multiple-use mandate.

The planning area is located in Kane and Garfield Counties, Utah, and encompasses approximately 1.87 million acres of public land. For the GSENM-Grand Staircase, Kaiparowits, and Escalante Canyons Units, this planning effort is needed to identify goals, objectives, and management actions necessary for the proper care and management of the objects and values identified in Proclamation 6920, as modified by Proclamation 9682. For lands in the KEPA, this planning effort is needed to identify goals, objectives, and management actions necessary to ensure that public lands and their various resource values are utilized in the combination that will best meet the present and future needs of the American people.

The entire planning area is currently managed by the BLM and under the GSENM Plan (BLM 2000), as amended. This planning effort would replace the existing Monument Management Plan with four new RMPs.

The BLM reviewed public scoping comments to identify planning issues that directed the formulation of alternatives and frames the scope of analysis in the Draft RMPs/EIS. Issues identified include management of recreation and access; paleontological and cultural resources; livestock grazing; mineral resources; and wildlife, water, vegetation, and soil resources. This planning effort also considers management of lands with wilderness characteristics and designation of Areas of Critical Environmental Concern.

The formal public-scoping process for the RMPs and EIS began on January 16, 2018, with the publication of a Notice of Intent in the **Federal Register** (83 FR 2179) and ended on April 11, 2018. The BLM held public scoping meetings in Kanab and Escalante, Utah, in March 2018. The Notice of Availability for the Draft RMPs/EIS was published on August 17, 2018 (83 FR 41108), followed by a Notice of Error published on August 31, 2018, that extended the public comment period on the Draft RMPs/EIS (83 FR 44659). The BLM accepted public comments on the range of alternatives, effects analysis, and Draft RMPs for 105 days, ending on November 30, 2018. During the public-comment period, public meetings were held in Kanab and Escalante, Utah.

The Draft RMPs/EIS evaluated four alternatives in detail. Alternative A is the No Action alternative, which is a continuation of existing decisions in the 2000 Monument Management Plan. Alternative B generally focuses on protection of resources (*e.g.,* wildlife, vegetation, cultural, etc.) while providing for targeted resource use (*e.g.,* rights-of-way, travel, mineral development). Alternative C generally represents a balance of resource protection and resource use. Alternative D generally focuses on maximizing resource use (*e.g.,* rights-of-way, minerals development, livestock grazing) while still providing for resource protection as required by applicable regulations, laws, policies, plans, and guidance, including protection of Monument objects within the GSENM Units. Comments on the Draft RMPs/EIS received from the public, the Utah Resource Advisory Council, cooperating agencies and tribes, and internal BLM review were considered and incorporated as appropriate into the Proposed RMPs/Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change the range of alternatives considered. The BLM developed Alternative E in response to comments received on the Draft RMPs/EIS and includes elements of Alternatives A, B, C, and D.

The BLM has identified Alternative E as the agency's Proposed RMPs. Identification of this alternative, however, does not represent final agency direction. The Notice of Availability for the Proposed RMPs and Final EIS published in the **Federal Register** on August 23, 2019 (84 FR 44326), initiating a protest period that ended on September 23, 2019.

The modified Proposed RMPs and Final EIS and an accompanying errata sheet that includes a summary of all of the changes made are available on the BLM's ePlanning website at: *https://go.usa.gov/xVCGJ.* The BLM is providing a 30-day protest period for the modified Proposed RMPs and Final EIS. All protests must be in writing and submitted, as set forth in the **DATES** and **ADDRESSES** sections earlier. The BLM will accept protests pertaining to new information identified in the modified Proposed RMPs and Final EIS. Please do not resubmit protests previously submitted during the protest period that was open from August 23 through September 23, 2019. The BLM will render a written decision on valid protests received during both protest periods.

Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you may request that the BLM withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, and 43 CFR 1610.2.

Edwin L. Roberson,

State Director.

[FR Doc. 2019–22774 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW00000.L5110000.GN0000.LVEMF1805980.18X.MO#4500139740]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed POA11 Project—Modification to the Plan of Operations for the Coeur Rochester and Packard Mines, Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Humboldt River Field Office, Winnemucca, Nevada has prepared a Draft Environmental Impact Statement (EIS) and by this notice announces the beginning of the public comment period to solicit public comments on the Draft EIS. The BLM is the lead agency in development of the Draft EIS and will be evaluating Coeur Rochester, Inc.'s (CRI) request for the proposed expansion of its silver mining operations at the existing Coeur Rochester and Packard Mines.

DATES: This notice initiates the public comment period for the Draft EIS. Comments may be submitted in writing until December 2, 2019. The date(s) and location(s) of any comment meetings will be announced at least 15 days in advance through local media, newspapers and the BLM website at: *https://go.usa.gov/xPdjC.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 45-day public comment period. We will provide additional opportunities for public participation upon publication of the Final EIS.

ADDRESSES: You may submit comments related to the Coeur Rochester and Packard Mines Plan of Operations Amendment 11 (POA11) Project by any of the following methods:

- *Website*: *https://go.usa.gov/xPdjC.*
- *Email: wfoweb@blm.gov*; include ''Coeur POA11 EIS Comments'' in the subject line.
- *Fax:* (775) 623–1740.
- *Mail:* 5100 E Winnemucca Blvd., Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed mine expansion contact Kathleen Rehberg, telephone: (775) 623–1500, email: *krehberg@blm.gov,* address: 5100 East

Winnemucca Boulevard., Winnemucca, Nevada 89445. Contact Ms. Rehberg to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Rehberg during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: CRI has requested to expand its operations at the Rochester and Packard mines by modifying its approved Plan of Operations. The mine is located approximately 26 miles northeast of Lovelock, Nevada. The mine is currently authorized to disturb up to 2,203.1 acres (approximately 164.6 acres of private land and 2,038.5 acres of public land), which was analyzed in a series of EISs and Environmental Assessments beginning in 1986 through the latest EIS in 2015. The Proposed Action is to expand mining in both of CRI's current pits (the Rochester and Packard pits) and move, relocate, or expand heap leach pads, waste rock dumps, haul roads, access road, water pipeline, and processing facilities. The proposal would increase disturbance by 2,815.4 acres (435.2 acres on private land and 2,380.2 acres on public land).

Mining of the Rochester Pit would extend below the groundwater resulting in a permanent pit lake after closure. Additional, potentially acid generating material would be excavated and would be processed as ore or stored according to CRI's Waste Rock Storage Plan. The plan would also necessitate an upgrade in power distribution lines and a substation. With the proposed expansion, mine life would be extended to 2033, and would be followed by mine closure and reclamation.

The purpose of this comment period is for the public to review and provide comments on the Draft EIS. The Draft EIS, after scoping, has identified and analyzed impacts to the following resource areas: Air and atmospheric resources; cultural resources; noxious weeds, invasive species and non-native species; migratory birds; Native American religious concerns; wastes and materials (hazardous and solid); water quality (surface and ground); geology, minerals, and energy; lands and realty; paleontology; rangeland management; recreation; social values and economics; soils; special status species (plants and wildlife); transportation and access; vegetation; visual resources; and wildlife.

The Draft EIS describes and analyzes the Proposed Action's direct, indirect, and cumulative impacts on all affected resources. In addition to the Proposed Action, the following alternatives are also analyzed in the document: (1) Alternative 1, which is an alternate method to manage and store potentially acid generating material; (2) Alternative 2, which was developed to address and manage pit lake development and water quality; and (3) The No Action Alternative.

The BLM has consulted and continues to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to Indian trust assets and potential impacts to cultural resources have been analyzed in the Draft EIS. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the Proposed Action that the BLM is evaluating, are invited to participate in the comment process.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

David Kampwerth,

Field Manager, Humboldt River Field Office.

[FR Doc. 2019–22707 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO310000/L13100000.PP0000/19X; OMB Control Number 1004–0209]

Agency Information Collection Activities; Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 17, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jean Sonneman. U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240; or by email to *jsonneman@blm.gov.* Please reference OMB Control Number 1004–0209 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Subijoy Dutta by email at *sdutta@blm.gov,* or by telephone at 202–912–7152.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. Additionally, it helps the public understand the BLM's information collection requirements and provides the requested data in the desired format.

The BLM is soliciting comments on the ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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. The BLM will include or summarize each comment in our request to Office of Management and Budget (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 in your comment to the BLM to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

The following information pertains to this request:

Abstract: This collection of information enables the BLM to ensure compliance with standards for the

measurement of oil produced from Federal and Indian (except Osage Tribe) leases and compliance with pertinent statutes.

Title of Collection: Measurement of Oil.

OMB Control Number: 1004–0209.

Form: None.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Businesses that participate in the production of oil from Federal and Indian (except Osage Tribe) leases.

Total Estimated Number of Annual Respondents: 11,742.

Total Estimated Number of Annual Responses: 11,742.

Estimated Completion Time per Response: Varies from 6 minutes to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 5,884 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for all except the following information collection one-time activities pertaining to equipment in operation before January 17, 2017:

- Documentation of Testing for Approval of a Coriolis Meter;
- Request to Use Alternate Oil Measurement System; and
- Testing of Alternate Oil Measurement System.

Total Estimated Annual Nonhour Burden Cost: $5,580,305.00.

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.*)

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2019–22805 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLWO320000.L13200000.PP0000; OMB Control Number 1004–0194]

Agency Information Collection Activities; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection control number.

DATES: Interested persons are invited to submit comments on or before December 17, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jean Sonneman, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240; or by email to *jsonneman@blm.gov.* Please reference OMB Control Number 1004–0194 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), please contact Stuart Grange by email at *sgrange@blm.gov,* or by telephone at 202–912–7067. Persons who use a telecommunication device for the deaf may call the Federal Relay Service at 1–800–877–8339, to leave a message for the above person.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. It also helps the public understand the BLM's information collection requirements and provide the requested data in the desired format.

The BLM is soliciting comments on the proposed ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) How might the BLM 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. The BLM 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, the BLM cannot guarantee that we will be able to do so.

The following information pertains to this request:

Abstract: This control number enables the BLM to determine whether operators and mining claimants are meeting their responsibility to prevent unnecessary or undue degradation while conducting exploration and mining activities on public lands under mining laws.

Title of Collection: Surface Management under the General Mining Law (43 CFR parts 3809).

OMB Control Number: 1004–0194.

Forms:

- *3809–1, Surface Management Surety Bond;*
- *3809–2, Surface Management Personal Bond; and*
- *3809–4, Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal and;*
- *3809–5, Notification of Change of Operator and Assumption of Past Liability.*

Type of Review: Extension of a currently approved collection.

Description of Respondents: Operators and mining claimants.

Estimated Number of Annual Respondents: 1,495.

Estimated Number of Annual Responses: 1,495.

Estimated Completion Time per Response: Varies from the number of minutes/hours per response.

Total Estimated Number of Annual Burden Hours: 183,808.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $8,900 for notarizing Forms 3809–2 and 3809–4a.

The estimated annual burdens of this collection are itemized below:

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours (Column B × Column C)
Initial or Extended Plan of Operations (3809.11)	49	320	15,680
Data for EIS (3809.401(c))	5	4,960	24,800
Data for Standard EA (3809.401(c))	15	890	13,350
Data for Simple Exploration EA (3809.401(c))	29	320	9,820
Modification of Plan of Operations (3809.430 and 3809.431)	107	320	34,240
Data for EIS (3809.432(a) and 3809.401(c))	2	4,960	9,920
Data for Standard EA (3809.432(a) and 3809.401(c))	35	890	31,150
Data for Simple Exploration EA (3809.432(a) and 3809.401(c))	70	320	22,400
Notice of Operations (3809.21)	396	32	12,672
Modification of Notice of Operations (3809.330)	167	32	5,344
Extension of Notice of Operations (3809.333)	140	1	140
Surface Management Surety Bond, Form 3809–1 (3809.500)	28	8	224
Surface Management Personal Bond, Form 3809–2, (3809.500)	170	8	1,360
Bond Rider Extending Coverage of Bond, Form 3809–4 (3809.500)	25	8	200
Surface Management Personal Bond Rider, Form 3809–4a (3809.500)	69	8	552
Notification of Change of Operator and Assumption of Past Liability, Form 3809–5 (3809.116)	52	8	416
Notice of State Demand Against Financial Guarantee (3809.573)	1	8	8
Request for BLM Acceptance of Replacement Financial Instrument (3809.581)	13	8	104
Request for Reduction in Financial Guarantee and/or BLM Approval of Adequacy of Reclamation	78	8	624
Response to Notice of Forfeiture of Financial Guarantee (3809.596)	13	8	104
Appeals to the State Director (3809.800)	30	40	1200
Federal/State Agreements (3809.200)	1	40	40
Totals	1,495		183,808

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*).

Chandra Little,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2019–22800 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF07000.L14400000.EU0000.19X; COC–78399]

Notice of Realty Action: Direct Sale of Public Land in Saguache County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing a direct (non-competitive) sale of 0.21 acre of public land in Saguache County, Colorado to Lucky 3 (Lucky 3), Inc. The appraised fair market value for the sale parcel is $350. The direct sale will resolve an inadvertent unauthorized occupancy on the subject public land under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 and BLM land sale regulations.

DATES: Written comments must be received no later than December 2, 2019.

ADDRESSES: Mail written comments to Associate Field Manager, BLM Gunnison Field Office, 210 W Spencer Ave., Suite A, Gunnison, CO 81230. Written comments may also be emailed to *blm_co_gfo_nepa_comments@blm.gov.* A copy of the Environmental Assessment (EA) is available online at *https://go.usa.gov/xPm2b.*

FOR FURTHER INFORMATION CONTACT: Marnie Medina, Realty Specialist, by telephone (970) 642–4954 or by email at *mmedina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In 1998, Lucky 3 acquired private land adjacent to public land south of Cochetopa Park. Due to a miscommunication between Lucky 3 and its land surveyor, Lucky 3 inadvertently constructed a cabin, an underground propane tank, and a septic tank on the adjacent public land. Lucky 3 later discovered its error with the land status and notified the BLM, which now proposes to resolve this nonwillful, inadvertent trespass through a direct sale.

The sale meets the criteria for a direct sale in accordance with FLPMA, Section 203(a)(3) and 43 CFR 2711.3–3(a). Direct sales (without competition) may be used when, in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale.

A mineral potential report was completed on September 10, 2018, which found that the mineral potential for the parcel is low to none. The criteria established in FLPMA Section 209(b)(1)(2) allows transfer of the minerals to the surface owner if a reservation would interfere with or preclude the current residential use of the parcel and that such residential development is a more beneficial use of the land than potential mineral development. Since the property is encumbered with development, transferring the minerals would protect the private structures from potential mineral development on the property. Current development on the 0.21-acre parcel includes: A cabin on a poured concrete foundation with a patio, a covered patio, a deck, and stairs to the deck; an underground propane tank; an underground septic tank; and associated buried pipes for propane, water, and sewage. A water well that services the cabin is located on the adjacent private property about 35 feet from the property boundary. Any mineral development on the parcel would likely require removal of the improvements. Given that the mineral potential on the parcel is low to none, the current residential use of the

parcel is the most beneficial use of the property. In accordance with BLM regulations, the BLM authorized officer finds the public interest would best be served by conducting a direct sale pursuant to 43 CFR 2711.3–3(a)(5). This regulation allows a direct sale when a need exists to resolve inadvertent unauthorized use or occupancy of the lands.

The subject parcel, which is approximately 30 miles southeast of Gunnison, Colorado, at the southern end of Cochetopa Park in Saguache County and is legally described as:

New Mexico Principal Meridian, Colorado

T. 45 N, R. 2 E,
sec. 24, lot 4.

The area described contains 0.21 acres.

This direct sale is in conformance with the BLM Gunnison Resource Area Approved Resource Management Plan, approved in February 1993.

In conformance with the National Environmental Policy Act, a parcel-specific EA document numbered DOI–BLM–CO–F070–2017–0010–EA was prepared in connection with this Notice (see **ADDRESSES**). Based on the EA, a signed and approved Finding of No Significant Impact and a Decision dated October 5, 2018, the BLM is proceeding with the direct sale pending publication of this Notice.

Pursuant to the requirements of 43 CFR 2711.1–2(d), publication of this Notice in the **Federal Register** will segregate the land from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Until completion of the direct sale, the BLM will no longer accept land use applications affecting the public land. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** or on a termination of the segregation, or on October 18, 2021 unless extended by the BLM Colorado State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

The patent, if issued, will be subject to the following terms, conditions, and reservations:

1. Reservation of rights-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945);

2. All valid existing rights issued prior to conveyance; and

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupation on the patented land.

Information concerning the direct sale, appraisal, reservations, procedures and conditions, and other environmental documents that may appear in the BLM public files for this direct sale parcel are available for review during normal business hours, Monday through Friday, except during Federal holidays, at the BLM Gunnison Field Office (see **ADDRESSES**).

All interested parties will receive a copy of this Notice once it is published in the **Federal Register**. The BLM will publish this Notice in the *Valley Courier* newspaper once a week for 3 consecutive weeks.

Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Any adverse comments regarding this direct sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any timely filed objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711).

Jamie E. Connell,
Colorado State Director.

[FR Doc. 2019–22714 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO310000.19X.L13140000.PP0000; OMB Control Number 1004–0210]

Agency Information Collection Activities; Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 17, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jean Sonneman. U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington DC 20240; or by email to *jsonneman@blm.gov.* Please reference OMB Control Number 1004–0210 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Beth Poindexter by email at *bpoindexter@blm.gov,* or by telephone at 505–954–2112.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. It also helps the public understand the BLM's information collection requirements and provides the requested data in the desired format.

The BLM is soliciting comments on the proposed ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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. The BLM 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 in your comment to the BLM to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Abstract: The Bureau of Land Management (BLM) is requesting renewal of a control number that pertains to the accurate measurement and proper reporting of all natural gas

removed or sold from Federal and Indian leases, units, unit participating areas, and areas subject to communitization agreements.

Title of Collection: Measurement of Gas.

OMB Control Number: 1004–0210.

Form: None.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Primarily business that operate Federal oil and gas leases. Also lessees, purchasers, and transporters of natural gas from Federal oil and gas leases.

Total Estimated Number of Annual Responses: 430,782.

Estimated Completion Time per Response: Varies from 6 minutes to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 95,068 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: ''On occasion'' with the following exceptions:

A. The following information collection activities are one-time-only, and pertain to equipment in operation before January 17, 2017:

- Transducers—Test Data Collection and Submission for Existing Makes and Models;
- Flow-Computer Software—Test Data Collection and Submission for Existing Makes and Models;
- Isolating Flow Conditioners—Test Data Collection and Submission for Existing Makes and Models;
- Differential Primary Devices Other than Flange-Tapped Orifice Plates—Test Data Collection and Submission for Existing Makes and Models;
- Linear Measurement Devices—Test Data Collection and Submission for Existing Makes and Models; and
- Accounting Systems—Test Data Collection and Submission for Existing Makes and Models.

B. Spot sampling in accordance with 43 CFR 3175.115(a) and (b) is required at the following frequency:

- Once every 12 months for very-low volume facility management points (FMPs);
- Once every 6 months for low-volume FMPs;
- Once every 3 months for high-volume FMPs;
- Once a month for very-high volume FMPs.

C. The following information collection activities require a response in fewer than 30 days upon receipt of a request from the BLM:

- The operator must submit all gas analysis reports to the BLM within 15 days of the due date for the sample as specified in 43 CFR 3175.115.
- A BLM request for information, either while the BLM is witnessing a gas analysis or conducting a production audit, generally requires a response within 2 weeks. The pertinent regulations are at 43 CFR 3175.102(e)(2), 3175.113(d)(1), 3175.118(c) and (d), 3175.104(a), and 3175.104(b).
- An operator must produce proof of test equipment recertification immediately when a BLM inspector is present to witness the verification of a mechanical record or EGM system under 43 CFR 3175.102(h), or to witness a gas sample being taken under 43 CFR 3175.113(c)(3) or 3175.114(a)(3).

Total Estimated Annual Nonhour Burden Cost: $24,600,894.

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.*)

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2019–22798 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000.PN0000/LXSITCOR0000/LLWO350000/17X; OMB Control Number 1004–0206]

Agency Information Collection Activities; Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 17, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jean Sonneman. U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240; or by email to *jsonneman@blm.gov.* Please reference OMB Control Number 1004–0206 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeremy Bluma by email at *jbluma@blm.gov,* or by telephone at 208–373–3847.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. It also helps the public understand the BLM's information collection requirements and provides the requested data in the desired format.

The BLM is soliciting comments on the proposed ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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. The BLM 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 in your comment to the BLM to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Abstract: This control number enables the BLM to collect the necessary information to authorize the use of public lands for solar and wind energy, pipelines, and electric transmission lines with a capacity of 100 Kilovolts (kV) or more.

Title of Collection: Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development.

OMB Control Number: 1004–0206.

Form: SF–299.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Businesses that seek authorization to use public lands for solar or wind energy development, pipelines, or electric transmission lines with a capacity of 100 Kilovolts (kV) or more.

Total Estimated Number of Annual Responses: 3,042.

Estimated Completion Time per Response: Varies from 2 to 16 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 47,112.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $2,180,808.

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.*)

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2019–22806 Filed 10–17–19; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1124]

Certain Powered Cover Plates; Commission Determination To Review in Part and To Remand a Final Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part and remand in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on August 12, 2019, finding a violation of section 337 in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation on July 23, 2018, based on a complaint filed by SnapRays, LLC d/b/a SnapPower of Vineyard, UT (''SnapPower''). 83 FR 34871 (July 23, 2018). The complaint, as supplemented, alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain powered cover plates by reason of infringement of certain claims of U.S. Patent Nos. 9,871,324 (''the '324 patent''); 9,882,361 (''the '361 patent''); 9,917,430 (''the '430 patent''); and U.S. Design Patent No. D819,426 (''the Design Patent,'' or ''the 'D426 patent'') (collectively, ''the Asserted Patents''). *Id.* at 34872. The notice of investigation named thirteen respondents: (1) Ontel Products Corporation of Fairfield, New Jersey (''Ontel''); (2) Dazone, LLC of Ontario, Canada (''Dazone''); (3) Shenzhen C-Myway of Shenzhen, Guangdong, China (''C-Myway''); (4) E-Zshop4u LLC of Howey in the Hills, Florida (''E–ZShop4u''); (5) Desteny Store of Fort Meyers, Florida (''Desteny''); (6) Zhongshan Led-Up Light Co., Ltd. of Zhongshan, Guangdong, China (''Led-Up''); (7) AllTrade Tools LLC of Cypress, California (''Alltrade''); (8) Guangzhou Sailu Info Tech. Co., Ltd. of Guangzhou, Gunagdong, China (''Guangzhou Sailu''); (9) Zhejiang New-Epoch Communication Industry Co., Ltd. of Yueging, Zhejiang, China (''NEPCI''); (10) KCC Industries of Eastvale, California (''KCC''); (11) Vistek Technology Co., Ltd. of Fuyong, Baoan, Shenzhen, China (''Vistek''); (12) Enstant Technology Co., Ltd. of Xixiang Baoan District, Shenzhen, China (''Enstant''); and (13) Manufacturers Components Incorporated of Pompano Beach, Florida (''MCI'') (collectively, ''the Respondents''). *Id.* The Commission's Office of Unfair Import Investigations (''OUII'') was also named as a party.

The evidentiary hearing on the question of violation of section 337 was held April 8–9, 2019. As of the date of the evidentiary hearing, as well as of the date of the issuance of the ID, the status of all 13 of the named Respondents was as follows:

Ontel—terminated by settlement (Order No. 12, *non-reviewed* Nov. 27, 2018);

E-Zshop4U—terminated by Consent Order (Order No. 5, *non-reviewed* Oct. 29, 2018);

KCC—terminated by Consent Order (Order No. 6, *non-reviewed* Oct. 29, 2018);

Alltrade—terminated by settlement (Order, No. 36, *non-reviewed* May 8, 2019);

Dazone—found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);

Desteny—found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);

NEPCI—found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);

MCI—found in default (Order No. 18, *non-reviewed* Dec. 21, 2018);

Myway—Complaint withdrawn due to inability to serve this respondent (Order No. 8, *non-reviewed* October 23, 2018);

Led-Up—complaint withdrawn due to inability to serve this respondent (Order No. 8, *non-reviewed* October 23, 2018);

Guangzhou Sailu—complaint withdrawn due to inability to serve this respondent (Order No. 8, *non-reviewed* October 23, 2018);

Enstant—actively participated in all proceedings, and

Vistek—actively participated in all proceedings. *See* ID/RD at 11–12.

Complainant SnapPower, respondents Enstant and Vistek (collectively, ''Enstant/Vistek,'' or ''the Participating Respondents''), and the Commission investigative attorney (''the IA'') participated in the hearing. *See id.* at 11.

We note that Respondents Enstant and Vistek chose not to contest importation and infringement. Similarly, there were no genuine disputes of material fact with respect to the technical prong of the domestic industry (''DI'') requirement. As a result, these legal issues have been decided against Enstant and Vistek and against a category of Respondents identified by the ID as the ''Defaulting Respondents'' through summary determination (''SD'') orders. ID/RD at 2–3 (citing Order Nos. 39 (July 10, 2019) (Importation and Infringement), 40 (July 22, 2019) (Technical DI)). In particular, Order No. 39 explains the rationale and evidentiary basis for granting SnapPower's Infringement SD Motion. *Id.* at 12–13 (citing Order No. 39, Doc. ID No. 680751 (July 10, 2019)). Order No. 39 became the Commission's determination on August 1, 2019,

pursuant to Commission Rule 210.42(h)(3), 19 CFR 210.42(h)(3).

On August 12, 2019, the ALJ issued her ''Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond,'' finding a violation of section 337. The ID finds that a violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain powered cover plates that infringe the asserted claims of the '361 patent by Enstant/Vistek. *See id.* at 125–26. The ID also finds, *inter alia,* that ''Respondents Enstant and Vistek filed a motion for summary determination of non-infringement ('Redesign SD Motion') of [the '361 patent] by Redesign Models P001 (Smart Wall Plate Charger, Decor Outlet, with USB charger) and P002 (Smart Wall Plate Charger, Duplex Outlet with USB charger).'' ID at 14. Further, the ID states that ''Enstant's and Vistek's Redesign SD Motion was effectively rendered moot by rulings on Motions in Limine . . . .'' *Id.*

In her Recommended Determination (''RD''), the ALJ recommended that the Commission should issue a General Exclusion Order, Cease and Desist Orders, and impose a one hundred percent bond during the period of Presidential Review. *Id.* at 126.

On August 26, 2019, Participating Respondents Enstant/Vistek jointly filed a timely petition for review of various portions of the ID. The IA likewise timely filed a petition for review of the ID in part. On September 3, 2019, Snappower timely filed a response to Enstant/Vistek's and the IA's petitions for review. The IA likewise timely filed a response to Enstant/Vistek's petition for review.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined: (1) To review the final ID's finding that Enstant/Vistek's redesign summary determination motion is moot, *see id.* at 14–15, and on review, to remand the final ID on this issue; (2) to review the ID's finding that Complainant's R&D investment with respect to the '361 patent is substantial under Section 337 (a)(3)(C), ID at 97, and on review, to take no position with regard to this determination; (3) to review, and on review to strike, the third paragraph on page 56 of the ID; and (4) to correct the ID's misstatements regarding the asserted claims of the '361 patent, *see id.* at 3–4, Table 1; *id.* at 125 ¶¶ 3, 6, to the effect that the asserted claims of the '361 patent include claims 1, 4, 10, 14, 21, 23, and 24. The Commission has determined not to review the remainder of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22754 Filed 10–17–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1123]

Certain Carburetors and Products Containing Such Carburetors; Commission Decision To Review in Part an Initial Determination Finding Complainant Failed To Satisfy the Economic Prong of the Domestic Industry Requirement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the administrative law judge's (''ALJ'') initial determination (''ID''), which grants respondents' motion for summary determination that the complainant failed to satisfy the economic prong of the domestic industry requirement as to U.S. Patent Nos. 6,394,424 (''the '424 patent''); 6,439,547 (''the '547 patent''); 6,533,254 (''the '254 patent''); and 7,070,173 (''the '173 patent). On review, the Commission affirms with modification the ID's finding that respondents are entitled to summary determination that the complainant failed to satisfy the domestic industry requirement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 20, 2018, based on a complaint filed by Walbro, LLC (''Walbro'') of Tucson, Arizona. 83 FR 34614–615 (July 20, 2018). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carburetors and products containing such carburetors by reason of infringement of one or more claims of the '424 patent; the '547 patent; the '254 patent; the '173 patent, and U.S. Patent No. 6,540,212 (''the '212 patent). *Id.* The complaint also alleges that an industry in the United States exists as required by 19 U.S.C. 1337(a)(2). 83 FR 34614–615. The notice of investigation names thirty-five (35) respondents. *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.*

The Commission previously terminated the '212 patent from the investigation. Order No. 72 (Aug. 5, 2019), *not reviewed,* Notice (Aug. 22, 2019).

On June 25, 2019, respondents *Amazon.com*, Inc.; Lowe's Companies, Inc.; Menard, Inc.; Techtronic Industries Co. Ltd.; The Home Depot, Inc.; Tractor Supply Company; Walmart, Inc.; and Zhejiang Ruixing Carburetor Manufacturing Co., Ltd. (collectively, ''Respondents''), as well as Cabela's LLC and Thunderbay Products, filed a motion for summary determination that Walbro failed to satisfy the economic prong of the domestic industry requirement. ID at 1. On July 12, 2019, Walbro opposed the motion. *Id.* OUII did not submit a response to the motion. *Id.*

On August 7, 2019, the Commission terminated Cabela's LLC from the investigation due to settlement. Order No. 75 (Aug. 7, 2019), *not reviewed,* Notice (Aug. 22, 2019). On July 10, 2019, the Commission also terminated Thunderbay Products from the

investigation based on a stipulated consent order and entry of a consent order. Order No. 65 (July 10, 2019), *not reviewed,* Notice (July 23, 2019).

On August 12, 2019, the ALJ issued the subject ID granting Respondents' motion for summary determination that Walbro failed to satisfy the economic prong of the domestic industry requirement. *See* ID.

On August 22, 2019, Walbro filed a petition for review of the ID.

On August 29, 2019, Respondents and OUII both filed responses to Walbro's petition for review.

The Commission has determined to review the subject ID in part. First, the Commission notes that Walbro's petition states that it no longer asserts the '547 patent in this investigation; and Walbro has abandoned its claim of a domestic industry with respect to the '547 patent by failing to seek Commission review. *See* Walbro petition at 1; *see also* 19 CFR 210.43(b)(2). Second, the Commission affirms the ID's finding that respondents are entitled to summary determination that Walbro failed to satisfy the domestic industry requirement. However, the Commission declines to adopt certain statements on pages 4, 5, and 6 in the ID that could be misinterpreted as applying a minimum threshold and as inconsistent with the flexible approach to domestic industry analysis. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–22755 Filed 10–17–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Second Amendment To Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

On October 10, 2019, the Department of Justice and the State of California on behalf of the California Department of Toxic Substances Control and Toxic Substances Control Account (''DTSC'') lodged a proposed amendment (''Amendment 2'') to a Consent Decree with the United States District Court for the Central District of California (''Court'') in the matter of *United States of America and State of California on behalf of the Department of Toxic Substances Control and Toxic Substances Control Account* vs. *Abex Aerospace et al.,* Civil Action No. 2:16–cv–02696 (C.D. Cal.). This Amendment 2 amends Appendices D, E, and F of the Consent Decree previously approved by the Court on March 31, 2017 (for which the Court also approved an amendment on April 5, 2018, ''Amendment 1''); that Consent Decree pertains to environmental contamination at Operable Unit 2 (''OU2'') of the Omega Chemical Corporation Superfund Site (Site) in Los Angeles County, California. Amendment 2 is for the purpose of adding additional settling parties to the Consent Decree, and follows the mechanisms that the previously approved Consent Decree sets forth for adding additional settlors.

The Consent Decree resolves certain claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, as well as related state law claims, in connection with environmental contamination at OU2. Amendment 2 does the following:

(a) Adds the following parties, each of which has owned or operated a facility within the commingled OU2 groundwater plume area, as Settling Cash Defendants:

- Exxon Mobil Oil Corporation, together with related entities Mobil Foundation Inc.; General Petroleum Corporation; and Mobil Oil Corporation; and
- Continental Heat Treating Inc., together with related entities Tower Industries, Inc.; Continental Development Co., L.P.; James Stull, an individual; Metallurgical Group, Inc. (formerly Smith Heat Treating, Inc.); 10643 Norwalk, LLC; The Anna A. Hathaway Revocable Trust; The Estate of Anna A. Hathaway; J Benjamin Hathaway; James G. Stull Living Trust; and James C. Stull Irrevocable Trust.

These parties are ''Certain Noticed Parties'' within the meaning of Paragraph 75 and Appendix G of the Consent Decree.

(b) Moves the following parties who were previously denoted as Settling Work Defendants in Appendix E of the Consent Decree to the category of Settling Cash Defendants in Appendix D of the Consent Decree: Alpha Therapeutic Corporation; American Standard, Inc.; Arlon Products Inc.; Astro Aluminum Treating Co. Inc.; Atlantic Richfield; BP Amoco Chemical Company; Gulfstream Aerospace Corporation; Hitachi Home Electronics; Howmet Aluminum Casting, Inc.; Johns Manville Celite Corporation; Kimberly Clark Worldwide Inc., Fullerton Mill; Kinder Morgan Liquids Terminals LLC; Luxfer USA Limited by British Alcan Aluminum plc; Metropolitan Water District of Southern California; NBC/Universal City Studios; Pacific Bell Telephone Company; Pfizer Inc.; Scripto-Tokai Corporation; Sempra Energy Solutions; Signet Armorlite, Inc.; Sonoco Products Company; Texaco Inc.; Texas Instruments Incorporated; The Sherwin-Williams Company; Union Oil of California; Weber Aircraft Corporation; and Yort, Inc. This is the process described in Paragraph 79 of the Consent Decree.

(c) Adds as Settling Cash Defendants two parties that had previously resolved their liability associated with the Omega Chemical Corporation facility: Kennedy-Wilson Properties and Radiant Technologies.

This Amendment 2 requires the additional settling parties in category (a) to pay $4,700,000 into Qualified Settlement Funds, as provided for in Paragraph 27(a) of the Consent Decree. The parties in category (b) are pre-existing settling parties under this Consent Decree, and their movement from the Settling Work Defendants to Settling Cash Defendants category does not require them to pay money to the United States and DTSC. The parties in category (c) are parties that have previously resolved their liability within the group of generators at the Omega Chemical Corporation facility, and are not required to pay money to the United States and DTSC.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of California on behalf of the Department of Toxic Substances Control and Toxic Substances Control Account vs. Abex Aerospace et al.,* D.J. Ref. No. 90–11–3–06529/10. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*

To submit comments:	*Send them to:*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

As provided by RCRA, a public meeting will be held on the proposed settlement if requested in writing by fifteen (15) days after the publication date of this notice. Requests for a public meeting may be made by contacting the EPA Remedial Project Manager for OU2, Julie Sullivan, by email at *sullivan.julie@epa.gov.* If a public meeting is requested, information about the date and time of the meeting will be published in the local newspaper, *The Whittier Daily,* and will be sent to persons on the EPA Omega Superfund Site mailing list.

During the public comment period, the lodged proposed Amendment 2 and the previously approved Consent Decree may be examined and downloaded at this Justice Department website: *https://www.usdoj.gov/enrd/consent-decrees.*

We will provide a paper copy of the Consent Decree and the proposed Amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $90.25 (25 cents per page reproduction cost) payable to the United States Treasury, for a paper copy of the initial Consent Decree, the previous Amendment 1, and the proposed Amendment 2. For a paper copy of the initial Consent Decree, the previous Amendment 1, and the proposed Amendment 2 without the appendices and signature pages to the initial Consent Decree, the cost is $25.25. For a paper copy of Amendment 2 only (without the initial Consent Decree or Amendment 1), together with its signature pages, the cost is $2.00.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–22739 Filed 10–17–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1768]

Roadside Impairment Detection and Field Sobriety Testing Technologies Market Survey

AGENCY: National Institute of Justice (NIJ), Justice.

ACTION: Notice of request for information.

SUMMARY: The National Institute of Justice (NIJ) is soliciting information for use in an upcoming Criminal Justice Testing and Evaluation Consortium (CJTEC) report tentatively titled, ''A Landscape Report of Roadside Impairment Detection and Field Sobriety Testing Technologies.'' The report will identify technologies that are commercially available or near-market technologies to determine impairment of an individual in a field setting. This document will assist law enforcement agencies in making informed decisions for purchasing impairment technologies to determine whether an individual is driving while impaired or under the influence of drugs.

DATES: Emailed responses must be received (and mailed responses postmarked) by 5:00 p.m. Eastern Time on December 2, 2019.

ADDRESSES: Responses to this request may be submitted electronically by email to Marjorie Baldi at *mbaldi@rti.org* with the subject line ''Impairment Detection Technologies **Federal Register** Response.'' Responses may also be sent by mail to the following address: Criminal Justice Testing and Evaluation Consortium (CJTEC), ATTN: Marjorie Baldi, Impairment Detection Technologies **Federal Register** Response, RTI International, P.O. Box 12194, 3040 E Cornwallis Road, Research Triangle Park, NC 27709–2194.

FOR FURTHER INFORMATION CONTACT: For more information on this market survey, please contact Rebecca Shute (CJTEC) by telephone at 919–248–4218 or *rshute@rti.org.* For more information on the NIJ CJTEC, visit *https://nij.ojp.gov/funding/awards/2018-75-cx-k003* and view the description, or contact Steven Schuetz (NIJ) by telephone at 202–514–7663 or at *steven.schuetz@usdoj.gov.* Please note that these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

Information sought: Specific product and company information for: (1) Technologies that can help law enforcement officers determine that a certain level of intoxicant is present in an individual's system at a specific cutoff concentration, and (2) technologies that help law enforcement officers establish whether an individual is impaired, including eye tracking technologies, physical coordination sensors and apps, and mental agility apps. An independent response should be submitted for each product that respondents would like CJTEC to consider in their landscape report. NIJ encourages respondents to provide information in common file formats, such as Microsoft Word, pdf, or plain text. Each response should include contact information.

Usage: Information provided in response to this request may be published in the upcoming landscape report, ''A Landscape Study of Roadside Impairment Detection and Field Sobriety Testing Technologies.''

Information categories: Comments are invited with regard to the market survey, including which categories of information are appropriate for comparison, as well as promotional material (*e.g.,* slick sheet) and print-quality photographs of the technology. At a minimum, CJTEC intends to include the following categories of information for each technology that may be of use to law enforcement officials:

1. Vendor Information
   a. Full name of company
   b. Contact information for technical contact for products
   c. Website URL
   d. Years the company has been in business
   e. Number and types of customers served (*e.g.,* municipal, county, or state agencies)
   f. Location where the technologies are manufactured, assembled, refurbished
   g. Picture or photograph of product
   h. Vendor logo
2. Product Information
   a. Device Category
   i. Technologies that determine that a certain level of intoxicant is present in an individual's system at a specific cutoff concentration (this includes products that detect the presence of drugs in breath, oral fluid, sweat or other matrices)
   ii. Technologies that establish whether an individual is impaired, including eye tracking technologies, physical coordination sensors and apps, and mental agility apps.
   b. Physical Information
   i. Dimensions (in inches)
   ii. Weight (in pounds)
   iii. Primary materials used to construct the product

iv. Temperature range in which the product can reliably operate (in Fahrenheit and Celsius)
v. Display unit (*e.g.,* diagonal size of screen in inches as well as type of screen)
vi. Ruggedization (including features that optimize the product for field use, such as waterproofing, and any corresponding standards compliance)
c. Technical Specifications
i. Type of sensor or test used to determine impairment or intoxication
ii. Detection range of sensor or test (*e.g.,* g/L)
iii. Cut-off concentration for each drug tested (ng/mL)
iv. Accuracy of the instrument (*e.g.,* standard error, false positive and false negative rate)
v. Memory capability of instrument (either in MB/GB or number of tests stored)
vi. Whether test records and other data on the instrument can be transferred, and the method by which it is transferred (*e.g.,* internet connectivity, ethernet cables, Bluetooth connectivity)
vii. Power supply (*e.g.* battery or voltage of power supply)
viii. Battery life, if applicable
ix. Standard accessories offered
d. Types/Classes of Drugs Detected
i. Alcohol
ii. Opioids
iii. Benzodiazepines
iv. Cannabinoids
v. Barbiturates
vi. Cocaine
vii. Amphetamines
viii. Methamphetamines
ix. Ketamine
x. Other
e. Operating Information of Device/Hardware
i. Calibration requirements for device, if applicable (*e.g.,* how it is calibrated, how long it takes, frequency of calibration)
ii. Average response time of test (in minutes)
iii. Warm-up time of device (in minutes)
iv. Training offered and cost
v. Technical support offered and cost
vi. Other maintenance required for instrument
vii. Terms and cost of any standard and/or extended warranties offered
f. Software (if applicable)
i. Frequency of software updates
ii. Last known software release date
iii. Steps needed to update software
iv. Operating System required for use
v. Other system requirements for use (*e.g.,* hardware requirements or supporting software packages)
vi. Use of web servers or cloud storage by software
vii. Licenses required to use the software
g. Financial Information
i. Base unit cost (in USD)
ii. Software costs (including whether it is a subscription service, license, or other, in USD)
iii. Other associated costs (in USD)
iv. Accessory Costs (in USD)
v. Training Costs (in USD)
vi. Financing Options (*e.g.,* lease versus ownership)
h. Other information
3. Use Cases
a. Approximate number of units sold to law enforcement (if available)
b. Names and contact information (phone and email) for end users who have implemented the product in casework (if available)

David B. Muhlhausen,
Director, National Institute of Justice.

[FR Doc. 2019–22727 Filed 10–17–19; 8:45 am]
BILLING CODE 4410–18–P

JUSTICE DEPARTMENT

National Institute of Corrections

Charter Re-Establishment for the National Institute of Corrections Advisory Board

ACTION: Re-establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (FACA) and the Government in the Sunshine Act of 1976, the National Institute of Corrections (NIC) gives notice that it is re-establishing the charter for the National Institute of Corrections Advisory Board (hereafter referred to as ''the Board'').

FOR FURTHER INFORMATION CONTACT: Shaina Vanek, Advisory Board Designated Federal Officer for the National Institute of Corrections, 202–514–4202 or *svanek@bop.gov.*

SUPPLEMENTARY INFORMATION: The overall policy and operations of the NIC are under the supervision of the Board. In general, the NIC provides training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies; through cooperative agreements, awards funds to support program initiatives; and provides leadership to influence correctional policies, practices, and operations nationwide in areas of emerging interest and concern to correctional executives and practitioners as well as public policymakers. The Board will help develop long-range plans, advise on program development, and recommend guidance to assist the NIC's efforts in these areas. The Board will also advise the Attorney General about the appointment of the Director of the NIC.

The Board shall report to the Director of the NIC. The Director of NIC or his/her designated representatives may act upon the Board's advice and recommendations.

Under 18 U.S.C. 4351(b) and (c), the Board shall consist of sixteen members. The following six individuals shall serve as members of the Board ex officio: The Director of the Federal Bureau of Prisons or his designee, the Director of the Bureau of Justice Assistance or his designee, the Chairman of the United States Sentencing Commission or his designee, the Director of the Federal Judicial Center or his designee, the Administrator for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health and Human Services or his designee. The remaining ten members of the Board shall be selected by the Attorney General of the United States, after consultation with the Federal Bureau of Prisons and the NIC. Five of these shall be qualified as a practitioner (Federal, State, or local) in the field of corrections, probation, or parole, and shall serve for staggered three-year terms. Five of these members shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole, and shall serve for staggered three-year terms.

The NIC, when necessary, and consistent with the Board's mission and NIC policies and procedures may establish subcommittees, task groups, or working groups deemed necessary to support the Board. Establishment of subcommittees will be based upon an identified and articulated need, a verbal or written vote by the Board, and approval by the NIC Director. The Board has established no permanent subcommittees.

Any established subcommittees shall not work independently of the chartered Board, and shall report all of their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittees or any of its members update or report directly to the NIC or any Federal officers or employees. All

subcommittees operate under the provisions of the FACA (5 U.S.C. appendix), the Government in the Sunshine Act (5 U.S.C. 552b), governing Federal statutes and regulations, and governing NIC policies/procedures.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Committee meetings is two per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Committee or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to NIC Advisory Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of NIC Advisory Board.

All written statements shall be submitted to the Designated Federal Officer for the National Institute of Corrections Advisory Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Historical Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: October 15, 2019.

Shaina Vanek,

Acting Director and Advisory Board Designated Federal Officer, National Institute of Corrections.

[FR Doc. 2019–22777 Filed 10–17–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

199th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 199th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on November 4–5, 2019.

The meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 on November 4, from 2:00 p.m. to approximately 5:00 p.m. and on November 5, from 9:00 a.m. to approximately 3:30 p.m., with a break for lunch. The afternoon session on November 4 and the morning session on November 5 will be in C–5521 Room 4. The afternoon session on November 5 will take place in Room S–2508. The purpose of the sessions on November 4 and the morning of November 5 is for the Advisory Council members to finalize the recommendations they will present to the Secretary of Labor. At the November 5 afternoon session, the Council members will receive an update from leadership of the Employee Benefits Security Administration (EBSA) and present their recommendations.

The Council recommendations will be on the following issues: (1) Beyond Plan Audit Compliance: Improving the Financial Statement Audit Process and (2) Permissive Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds. Descriptions of these topics are available on the Advisory Council page of the Employee Benefits Security Administration website, at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before October 28, 2019 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW, Washington, DC 20210. Statements also may be submitted as email attachments in word processing or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of an email. Statements deemed relevant by the Advisory Council and received on or before October 28 will be included in the record of the meeting and made available through the EBSA Public Disclosure Room. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by October 28, 2019 at the address indicated.

Signed at Washington, DC, this 10th day of October, 2019.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2019–22738 Filed 10–17–19; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of three related teleconference meetings for the transaction of National Science Board business, as follows:

TIME AND DATE: (1) Tuesday, October 22, 2019 at 4:00–4:30 p.m. EDT; (2) Friday, October 25, 2019 at 1:00–2:00 p.m. EDT; and (3) Tuesday, October 29, 2019 at 11:00–11:30 a.m. EDT.

PLACE: These meetings will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: For each open teleconference, the SEP Committee will hear a presentation on the revision plan for the specified *Indicators 2020* Report, developed in response to reviews of the draft report from NSB members, federal agency stakeholders, and content experts. The SEP Committee will discuss and provide feedback to the Report authors on the revision plan.

October 22, 2019 Report topic:
Knowledge and Technology Intensive Industries

October 25, 2019 Report topic:
Academic R&D (reports ''A'' and ''B'')

October 29, 2019 Report topic:
Innovation

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Reba Bandyopadhyay (*rbandyop@nsf.gov*), 703/292–7000.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Ann Bushmiller,

Senior Counsel, National Science Board.

[FR Doc. 2019–22889 Filed 10–16–19; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee (EC), pursuant to National Science Foundation regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME & DATE: Wednesday, October 23, 2019, from 2:00–3:00 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; approval of Executive Committee minutes of June 26, 2019; and discuss issues and topics for an agenda of the NSB meetings scheduled for November 19–20, 2019.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: James Hamos, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703/292–8000. Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices/.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Ann Bushmiller,

Senior Counsel, National Science Board.

[FR Doc. 2019–22890 Filed 10–16–19; 4:15 pm]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–9 and CP2020–8]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 18, 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:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–9 and CP2020–8; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 123 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 10, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 18, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–22708 Filed 10–17–19; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—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:* October 18, 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 October 15,

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

2019, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 105 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–10, CP2020–9.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–22784 Filed 10–17–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87296; File No. SR–LCH SA–2019–006]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Extension of Weekly Backloading Cycle to Index Swaptions

October 11, 2019.

I. Introduction

On August 20, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), 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 CDS Clearing Rule Book (''Rule Book'') and CDS Clearing Procedures (''Procedures'') (collectively the ''CDS Clearing Rules'') to make conforming, clarifying, and clean-up changes intended to extend the weekly backloading process to Index Swaptions and amend the structure of the documentation relating to the backloading process (''Weekly Backloading Cycle'').[3] The proposed rule change was published for comment in the **Federal Register** on September 9, 2019.[4] The Commission has not received any 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

LCH SA is proposing to update the CDS Clearing Rules to permit the clearing process of Index Swaptions through the Weekly Backloading Cycle, which is currently the case for CDS.[5] For the purpose of this proposal, existing defined terms and provisions in the Rule Book and Sections 4 and 5 of the Procedures have been amended as described below.[6]

LCH SA proposes to make amendments to the existing defined term ''Weekly Backloading Transaction'' contained within Title I, Chapter 1, Section 1.1.1. of the Rule Book by adding a reference to ''Index Swaption.'' [7]

Section 4 of the Procedures will be updated to make the relevant eligibility requirements applicable to Index Swaptions to be submitted to LCH SA for clearing through the Weekly Backloading Cycle where necessary.[8] Specifically, the reference to an ''Index Swaption Intraday Transaction'' in Section 4.1(c)(i)(V) will be replaced by a reference to an ''Index Swaption'' and the reference to an ''Index Swaption Intraday Transaction'' in Section 4.1(c)(iii)(C) will be replaced by a reference to an ''Index Swaption that is an Index Swaption Intraday Transaction or a Weekly Backloading Transaction.'' [9]

Section 5 of the Procedures will be updated by adding a reference to ''Index Swaptions'' in Section 5.2 (b) so that Index Swaptions are eligible for the Weekly Backloading Cycle.[10]

LCH SA is also proposing to revise the CDS Clearing Rules to make typographical corrections and changes made for consistency purposes. Specifically, information on the Daily Backloading Cycle and the Weekly Backloading Cycle will be moved from the Rule Book and Section 5 of the Procedures to new Clearing Notices (*i.e.,* a Clearing Notice named ''Daily Backloading Cycle'' and a Clearing Notice named ''Weekly Backloading Cycle'') rather than leaving them in the CDS Clearing Rules.[11]

Section 5.2(b) and (c) of the Procedures will refer to a Clearing Notice processing schedule for each of the Daily Backloading Cycle and Weekly Backloading Cycle is proposed to be removed from these paragraphs.[12] In the Rule Book, defined terms of ''Eligible Weekly Backloading Transaction'' and ''Irrevocable Weekly Backloading Transaction'' will therefore refer to a Clearing Notice instead of Section 5 of the Procedures, as well as Sections 3.1.1 and 3.1.2 of the Rule Book.[13]

In addition, the definitions of ''Weekly Backloading Start Day'' and ''Weekly Backloading Novation Day'' in the Rule Book are proposed to be amended in order to make a general reference to a day as determined by LCH SA in accordance with Article 3.1.1.10 of the Rule Book as these days will be provided for in the new Clearing Notice named ''Weekly Backloading Cycle.'' [14] Article 3.1.1.10 will be amended to remove the publication date of this Clearing Notice as the provisional calendar, which specifies the Weekly Backloading Cycle, will not change each year.[15]

Finally, minor typographical corrections will be made to the definition of ''Converting Clearing Member'' in the Rule Book and Section 4.1(c)(vii)(B) of the Procedures.[16] The reference to Section 3 in Article 3.1.1.1 of the Rule Book is also proposed to be deleted as it is redundant of the provisions of the previous sentence of this Article.[17]

III. Discussion and 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 such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[18] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[19]

Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of LCH SA be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as, in general, to protect investors and the public interest.[20]

The Commission believes that by changing its CDS Clearing Rules as described above to allow for the clearing of Index Swaptions trades that were not previously cleared, LCH SA's rule proposal would promote the prompt and accurate settlement of derivative agreements, contracts, and transactions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used herein but not otherwise defined have the meaning set forth in the Rule Book and Procedures.

[4] Securities Exchange Act Release No. 34–86858 (September 3, 2019), 84 FR 47328 (Sept. 9, 2019) (SR–LCH SA–2019–006) (''Notice'').

[5] 84 FR at 47328–47329.

[6] 84 FR at 47329.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] 15 U.S.C. 78s(b)(2)(C).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 15 U.S.C. 78q–1(b)(3)(F).

by subjecting these products to its clearance system through the backloading cycle. The Commission believes that this, in turn, will protect investors and the public interest because the proposal ensures that trading in these products will adhere to the LCH SA clearing rules and procedures.

Further, the Commission believes that for the same reasons that including Index Swaptions into the backloading cycle fosters prompt and accurate settlement, moving the processing schedules for the weekly and daily backloading cycles from the CDS Clearing Rules to Clearing Notices is similarly consistent with an overall prompt system of clearance and settlement. Clearing members will continue to have access to this processing detail in the Clearing Notice.

Thus, the Commission believes that the proposal, in general, is consistent with Section 17A(b)(3)(F) of the Act.[21]

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, Section 17A(b)(3)(F) of the Act.[22]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–LCH SA–2019–006) be, and hereby is, approved.[23]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22719 Filed 10–17–19; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87143; File No. SR–CboeEDGA–2019–014]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

September 27, 2019.

Correction

In Notice document 201–21473, appearing on pages 52922–52925, in the issue of Thursday, October 3, 2019, make the following correction:

On page 52925, in the second column, beginning on the eighth line, the date reading ''November 6, 2019'' should read November 7, 2019''.

[FR Doc. C1–2019–21473 Filed 10–17–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF STATE

[Public Notice: 10926]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''The Holocaust'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''The Holocaust,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the United States Holocaust Memorial Museum, Washington, District of Columbia, from on or about September 1, 2020, until on or about May 15, 2029, 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: Chi D. Tran, Paralegal Specialist, 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.

Matthew R. Lussenhop,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–22761 Filed 10–17–19; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36359]

Norfolk Southern Railway Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railway Company

Norfolk Southern Railway Company (NSR), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of temporary overhead trackage rights by NSR over an approximately 156.3-mile rail line of The Kansas City Southern Railway Company (KCS) between Mexico, Mo. (KCS milepost 325.7), and Rock Creek Junction in Kansas City, Mo. (KCS milepost 482.0), pursuant to the terms of a written Temporary Trackage Rights Agreement dated October 8, 2019 (Agreement).[1]

NSR states that the purpose of the temporary trackage rights is to accommodate its emergency detour operations between Moberly, Mo., and Kansas City, on account of the inoperability of the Grand River Bridge in Brunswick, Mo., and thus permit continued rail service while operations over the bridge are being restored and until NSR is able to resume full operations. NSR states that the temporary trackage rights will expire no later than September 30, 2020.

NSR concurrently filed a petition for waiver of the 30-day period under 49 CFR 1180.4(g) to allow the proposed temporary trackage rights to become effective immediately. By decision served October 11, 2019, the Board granted NSR's request. As a result, this exemption is now effective.

As a condition to this exemption, any employees affected by the acquisition of

[1] A redacted copy of the Agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR. 1104.14. That motion is addressed in a separate decision.

the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36359, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NSR's representative, Garrett D. Urban, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

According to NSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 11, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Raina Contee,

Clearance Clerk.

[FR Doc. 2019–22740 Filed 10–17–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36350]

Vermilion Valley Railroad Company—Lease and Operation Exemption—CSX Transportation, Inc.

Vermilion Valley Railroad Company (VVRC), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from CSX Transportation, Inc. (CSXT), and operate a line of railroad between approximately CSXT milepost QSO 5.2 at or near Valuation Station 11606+40 and CSXT milepost QSO 3.3 at or near the switch to the existing coal loop track, near Pan, Ill., a distance of approximately 1.9 miles (the Line). VVRC states that the Line is a part of CSXT's Olin Secondary of the Woodland Subdivision.

VVRC is currently the operator of a line of railroad in Indiana that connects to the Line at the Indiana/Illinois state line. *See Vermilion Valley R.R.—Operation Exemption—FNG Logistics Co.,* FD 34340 (STB served May 16, 2003). According to VVRC, it currently uses the Line for interchange with CSXT, but VVRC and CSXT are now entering into a land and rail assets lease agreement under which VVRC will lease and operate over the Line as a common carrier. VVRC certifies that its proposed acquisition does not involve an interchange commitment.

VVRC certifies that its projected annual revenues as a result of the proposed transaction will not exceed $5 million and that the transaction will not result in the creation of a Class II or Class I rail carrier.

This transaction may be consummated on or after November 2, 2019 (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 25, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36350, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on VVRC's representatives: Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103; and Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Avenue NW, Suite 1300 South, Washington, DC 20004.

According to VVRC, this action is categorically excluded from environmental review under 49 CFR 1105.7(e) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 10, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–22716 Filed 10–17–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36352]

Rio Grande Pacific Corporation—Control Exemption—Big Spring Rail System, Inc.

Rio Grande Pacific Corporation (RGPC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Big Spring Rail System, Inc. (BSRS), a Class III rail carrier that operates over rail line between milepost 0.0 and milepost 3.3 in Howard County, Tex.[1] In its verified notice, RGPC states that the agreement to effectuate its control of BSRS will be prepared prior to the effective date of the exemption.[2]

The earliest this transaction may be consummated is October 31, 2019, the effective date of the exemption (30 days after the verified notice was filed).

According to the verified notice, RGPC currently controls the following Class III rail carriers: Nebraska Central Railroad Company; New Orleans & Gulf Coast Railway Company; Wichita, Tillman and Jackson Railway Company; and Idaho Northern and Pacific Railroad Company (collectively, the RGPC carriers).[3] The verified notice states that: (1) The rail lines operated by the RGPC carriers do not connect with the rail line operated by BSRS; (2) the transaction is not part of a series of anticipated transactions that would connect the rail line operated by BSRS with any railroad in the RGPC corporate family; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

[1] RGPC states that the line over which BSRS operates is owned by the City of Big Springs, Tex.

[2] Pursuant to 49 CFR 1180.6(a)(7)(ii), applicants are required to submit ''a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.'' According to RGPC, an agreement has not yet been prepared. RGPC is directed to file a copy of the agreement as soon as it is available.

[3] RGPC states that the properties of the RGPC carriers are located in Idaho, Louisiana, Nebraska, Oklahoma, Oregon, and Texas.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 24, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36352, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on RGPC's representative: Karl Morell, Karl Morell & Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to RGPC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 10, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–22881 Filed 10–17–19; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

Transmission System Vegetation Management Final Programmatic Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations and Tennessee Valley Authority's (TVA's) procedures for implementing the National Environmental Policy Act (NEPA). TVA has decided to adopt a condition-based control strategy for vegetation management, coupled with an initial clearing off all woody vegetation in the right-of-way (ROW) buffer zones. The full extent of the right-of-way (ROW) would then be maintained to a meadow-like end-state. This alternative is identified as the Preferred Alternative in the Transmission System Vegetation Management Programmatic Environmental Impact Statement (PEIS) and is considered to provide the best balance in enhancing system reliability and safety, minimization of environmental impacts, and striving for cost effectiveness. The notice of availability (NOA) of the Final EIS for the Vegetation Management Environmental Impact Statement was published in the **Federal Register** on August 30, 2019.

FOR FURTHER INFORMATION CONTACT: Anita E. Masters, Tennessee Valley Authority, 1101 Market Street, BRC 2C, Chattanooga, Tennessee 37402; telephone (423) 751–8697, or by email *aemasters@tva.gov.* The Final EIS, this Record of Decision (ROD) and other project documents are available on TVA's website *https://www.tva.gov/nepa.*

SUPPLEMENTARY INFORMATION: TVA is an executive branch federal agency and instrumentality of the United States created by and existing pursuant to the TVA Act of 1933. Its broad mission is to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

TVA's transmission system serves nearly ten million residents in a more than 82,000-square-mile area that spans most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. TVA's transmission system consists of a network of more than 16,000 miles of electric transmission lines and approximately 500 power substations all contained within approximately 238,000 acres of utility ROW. The electricity generated by these resources is transmitted along high-voltage transmission lines typically ranging from 46,000 to 500,000 volts (46 to 500 kilovolts [kV]) to more than 50 directly served, large industrial customers and to 154 local power companies (LPC). These LPCs typically utilize voltages in the range of 4 to 69 kV to connect with end-use customers (*e.g.,* residential homes).

Most of TVA's transmission system is located on private lands. TVA typically acquires perpetual rights through purchased easements which typically provide TVA the legal rights to maintain or repair transmission lines. Many of TVA's purchased transmission ROW easements provide TVA the perpetual right to keep the ROW clear of structures, trees, brush, stored personal property, as well as fire hazards. They also provide TVA the right to clear any trees located beyond the limits of the purchased easement that qualify as danger trees. There are some variations in TVA purchased easements, but in all cases, TVA's rights are defined by the language of the easement associated with the particular tract and applicable law.

TVA actively maintains approximately 46 percent (110,752 acres) of the transmission ROW. Approximately 51 percent of the ROW is used as cropland, golf courses, orchards or similar uses, which are primarily maintained by the landowner. While the floor of the ROW is often maintained by others in these areas, TVA conducts routine inspections and vegetation management of ditch banks, fence rows, towers, and other features. A relatively small amount of the TVA transmission system ROW (4,720 acres) does not require routine vegetation management by anyone. These areas include ROW that spans open water or deep valleys where vegetation growing at lower elevations does not threaten the transmission line. Trees tall enough to fall within or grow to an unsafe distance of transmission lines under maximum sag and blowout conditions are managed on all lands within and adjacent to the TVA ROW.

Historically, although TVA performed vegetation management consistent with its 1997 and 2008 Line Maintenance Manuals, it did not engage in system-wide maintenance planning. Rather, TVA employees in charge of individual ROW sectors had discretion to determine which vegetation within the ROW in their sector would be cleared. Decisions were based on a variety of factors, including how great a threat the vegetation presented to the transmission lines, budget constraints, and agreements with landowners. The industry-wide North American Electric Reliability Corporation (NERC) reliability standard enacted in 2007 states that transmission systems, like the TVA system, must maintain adequate transmission line clearances as required by the National Electric Safety Code (NESC) in order to be able to survive single-failure events while continuing to serve customer needs with adequate voltage. As such, between 2011 and 2014, the floor work maintenance cycle on transmission ROWs associated with transmission lines carrying 230 kV or higher was shortened from a three-year cycle to a two-year cycle. In addition, floor vegetation maintenance work incorporated a greater percentage of herbicide use to expedite adequate clearance. Although the NERC reliability standards did not require removing trees from the transmission ROW, the penalties assessed by NERC for allowing even one tree to encroach within a specified distance of a

conductor can be up to $1 million for each day that the encroachment is deemed to exist, and NERC can also mandate costly mitigation plans. Therefore, in response to the financial risk of non-compliance, and a desire to maintain system reliability, TVA increased the vegetation management budget to allow for reclaiming non-maintained areas within the width of the transmission ROWs.

Accordingly, traditional methods of vegetation management have had to improve to meet the reliability standards required by NERC via Reliability Standard FAC–003. Recent wildfire events in the Western United States have placed additional scrutiny on ROW vegetation management programs, as these events demonstrate the devastating loss of life and property that can occur if ROW are not properly maintained. TVA, like other energy companies, now develops long-range vegetation management plans for its transmission system, which include considerations for how and when TVA controls the vegetation growing on its transmission line ROWs.

The purpose of TVA's transmission system vegetation management program is to strategically manage TVA's existing transmission line ROW consistent with applicable laws, orders, standards, practices and guidance while providing reliable energy and protecting environmental resources. Vegetation management is needed to enhance public safety, improve the effectiveness of TVA's vegetation management program to eliminate vegetation that interferes with the operation of the existing transmission system so that TVA can to continue to provide safe and reliable electric power in a cost-effective and environmentally sound manner. Sound vegetation management will allow TVA to comply with all current NERC Reliability Standards FAC–003 to maintain transmission lines in a safe and reliable operating condition. In addition, TVA is currently subject to a court injunction issued July 31, 2017 by the U.S. District Court for the Eastern District of Tennessee in the lawsuit, *Sherwood* v. *TVA,* No. 3–12–cv–156, which requires ''TVA [to] maintain buffer zones on the edges of its ROW in a manner as described in its 1997 and 2008 Line Maintenance Manuals'' until TVA prepares and publishes a thorough Environmental Impact Statement pursuant to the National Environmental Policy Act analyzing TVA's ROW vegetation management program. Thus, the completion of this PEIS will enable TVA to fulfill its legal obligations in this court action.

Alternatives Considered

In determining policy and direction for managing vegetation along its transmission line ROW, TVA examined its past and current vegetation management practices and considered standard practices utilized by other entities such as Bonneville Power Administration and the USFS, as well as research conducted by the Electric Power Research Institute (EPRI). TVA's research revealed that Integrated Vegetation Management (IVM) is the industry standard. The goal of IVM is to provide an integrated and balanced approach of vegetation management that considers the overall long-term effect on public health and safety, reliability, environmental stewardship and cost. Therefore, TVA determined IVM should continue to be a central component of its vegetation management strategy.

Each of the proposed alternatives incorporates an IVM approach based on a carefully planned, multidimensional strategy developed in consultation with forestry and habitat experts. IVM aims to create conditions on the transmission ROW that improve safety and prevent power outages by creating inherently more compatible and self-sustaining ecosystems while ensuring compliance with regulatory standards. By combining physical vegetation removal with selective use of herbicides, IVM can more thoroughly eradicate incompatible vegetation and allow more ''compatible'' species to fill in, making it harder for tall-growing vegetation to reestablish.

All of the proposed alternatives would utilize a comprehensive set of methods of general vegetation control (*e.g.,* manual, mechanical, and herbicide/growth regulators) for each component of TVA's vegetation management program: Vegetation control, debris management, and restoration. Floor work under all alternatives (*i.e.,* that which is focused on the maintained herbaceous community) would continue on an established cycle and, in general, would be controlled using a mixture of methods. The proportion of methods to manage floor work has been approximately 90 percent herbicide, six percent mechanical, and four percent manual. Site-specific characteristics and the incorporation of TVA's office-level sensitive area review (O–SAR) process determine the selection of vegetation management methods employed. The net effect of TVA's O–SAR process is to consider the site-specific sensitivity at a given location on the transmission ROW in the development of a context sensitive approach to tools for vegetation management that not only have an effect on method selection for floor work but also for tree work. In addition, each of the four alternatives under consideration includes routine assessment methods to establish a basis for vegetation control measures. The alternatives differ in the selected approach to create the desired ''end-state'' of the vegetative communities along the transmission line ROW.

Alternatives considered in the PEIS are:

Alternative A—No Action—This vegetation management process is prescribed by the court injunction order currently in place in the *Sherwood* v. *TVA* litigation. Under the Order, TVA must leave existing trees in the maintained area of the ROW so long as they do not pose an immediate hazard to the transmission lines or structures. Additionally, TVA may remove or trim any tree in the previously maintained areas of ROW, or in the non-maintained areas of ROW, or any danger tree outside the transmission ROW that TVA deems to present an immediate hazard to its transmission line or structures in accordance with its contract rights. Vegetated ROW buffer would not be removed under this alternative. Floor work would continue to be managed on a nominal three-year cycle in previously cleared areas. The No Action Alternative does not adequately address the potential for service outages from trees growing into the line, falling into the line, or creating a fire hazard to the transmission lines and structures and as such creates an increasing risk to reliability. The No Action Alternative also does not adequately address the risk to public safety that can stem from wildfires caused by power lines. In addition, this approach would lead to a marked increase in worker safety concerns, due to the increased risk of serious injuries and fatalities associated with the increased need to undertake manual removal of large danger trees. Consequently, this alternative would not satisfy the project purpose and need and, therefore, is not considered a viable or reasonable vegetation management alternative.

Due to the injunction associated with the *Sherwood* v. *TVA* litigation, TVA has stopped removing woody vegetation except for trees that are an immediate hazard to the reliability of the transmission system and/or safety of the public. As a result, buffer zones within the existing ROW continue to contain vegetation incompatible with TVA's transmission system. The volume of non-compatible woody vegetation is also increasing within the previously-

cleared ROWs due to the court injunction order.

To ensure the safe and reliable operation of the transmission facilities and to improve the efficiency and effectiveness of vegetation management, Alternatives B, C and D would include an initial removal of vegetation within the buffer areas (except grasses, forbs, and some small shrubs) within the full extent of the ROW. Initial woody vegetation removal activities would entail the use of both mechanical (about 85 percent) and manual (about 15 percent) methods. Where terrain conditions provide for higher clearances (*i.e.,* ravines, steep slopes, etc.), vegetation may not conflict with the safe and reliable operation of the transmission lines, and thus would not need to be removed.

Alternative B—Cyclical-Based Control Strategy—Under Alternative B, after the initial removal of woody vegetation within the buffer areas, the full extent of the transmission ROW subject to TVA vegetation management would be cleared on a recurring cycle (typically every 3 years). All vegetation with the potential to interfere with the safe and reliable operation of the transmission system would be removed using a combination of herbicides and mechanical or manual methods depending on the specific site condition. Incompatible vegetation would be determined by field inspections. TVA previously has, in some instances, allowed property owners to maintain trees on their property within the transmission ROW. However, this practice is unsafe for the landowner as well as for the reliability of the transmission system because implementation, timing and consistency of owner maintenance can be unreliable. Accordingly, this practice would no longer be allowed under this alternative.

Alternative C—Condition-Based Control Strategy—End-State Meadow-like, Except for Areas Actively Maintained by Others (Compatible Trees Allowed)—After the initial removal of woody vegetation within the buffer areas, TVA would use an IVM approach to promote the establishment of a plant community dominated by low-growing herbaceous and shrub-scrub species that do not interfere with the safe and reliable operation of the transmission system. The goal of this vegetation management alternative would be to allow compatible vegetation to establish and propagate to reduce the presence of woody species. Hazard and danger trees would be removed using a combination of mechanical and manual methods depending on site conditions. Under this alternative, TVA would have the option to allow compatible trees to remain in areas actively maintained by others (such as residential lands, orchards, forest plantations, agricultural lands or other similar areas). The maintenance of trees in these areas would be optimized with the use of various inspection methods. These methods include aerial patrols, ground patrols, photogrammetry, and Light Detection and Ranging (LiDAR) surveys to identify the extent of any tree removal needed. These tools allow TVA to implement a targeted approach through the identification of categories that define the risk and removal of trees in these areas.

Alternative D—Condition-Based Control Strategy—End-State Compatible Vegetation Variable by Zone, Except for Areas Actively Maintained by Others (Compatible Trees Allowed)—As with Alternative C, after the initial removal of woody vegetation within the buffer areas, TVA would implement a process of vegetation community conversion within the transmission ROW wire zone using an IVM approach. However, under Alternative D, the buffer zone would be allowed to redevelop with compatible species of shrubs and trees. The goal of this vegetation management alternative is to promote a soft or ''feathered'' edge which could be used to provide a transition from forested habitat into the meadow-like habitat of the wire zone. Removal of hazard and danger trees and routine vegetation maintenance and management of compatible trees in areas actively maintained by others would be the same as Alternative C.

Environmentally Preferred Alternative

The scope of the potential alternatives is formed by the purpose and need of the proposed action, namely, the need to improve the effectiveness of TVA's vegetation management program by eliminating vegetation that interferes with the safe and reliable operation of the transmission system. Therefore, under all of the proposed alternatives, some vegetation control would be the same and as such, implementation of any of the alternatives would result in direct impacts to herbaceous plant communities as a result of the recurring impact on plants within the ROW. Because this is part of an existing management program, it would not result in widespread alteration of the overall plant community. While there is a potential for long-term impacts to natural resources, such impacts would be minimized through sound planning and the incorporation of TVA's O–SAR process as a best management practice (BMP) and the incorporation of other established TVA transmission ROW Management BMPs and established transmission-related environmental protection practices.

Impacts to the human environment (land use, socioeconomics, air, noise, cultural resources, solid/hazardous waste, public and worker safety, etc.) and on land management (residential, recreational, agricultural, commercial, industrial, National Park Service [NPS], U.S. Forest Service [USFS], City, County, and State), would occur as a result of the maintenance disturbance on the transmission ROW. These impacts would be localized and short-term disturbances that are not expected to result in notable or destabilizing effects. Additionally, impacts to cultural, historic and traditional cultural properties (TCPs) would be minimized by ensuring compliance with Section 106 of the Natural Historic Preservation Act (NHPA). TVA has prepared a Programmatic Agreement (PA) under NHPA in coordination with the seven State Historic Preservation Officers (SHPOs) within the TVA power service area, the Advisory Council on Historic Preservation (ACHP) and federally recognized Indian tribes within the study area. For vegetation management activities not covered by the PA or in the event that TVA does not have an executed PA with a particular SHPO, TVA would follow the Section 106 process for specific undertakings. As such, impacts from any of the management alternatives on the elements of the human environment are minor.

Alternative A—No Action would result in the lowest level of environmental impacts as the initial removal of woody vegetation would not be conducted, reducing equipment operations and manpower requirements in comparison to the other alternatives over the first eight years. Additionally, less floor work would be required in the future for approximately 8,094 acres of land that would be maintained under Alternatives B, C and D. However, Alternative A—No Action, does not meet the purpose and need for the project.

Habitat alteration associated with initial woody vegetation removal under Alternatives B, C and D is considered to be notable, but it should not destabilize associated resources. Alternative B entails the cyclical treatment of the entire transmission ROW to maintain the floor and would not be expected to result in a vegetative end condition that is of a higher quality as Alternatives C and D. Under Alternative C, the plant community would develop into a meadow-like end-state that is more compatible with the safe and reliable

operation of the transmission system and of higher quality than Alternative B. Management of the transmission ROW under Alternative D is intended to result in a meadow-like condition similar to Alternative C. Notably however, this alternative would allow for the development of a compatible border zone which provides greater benefits for selective wildlife species relative to Alternative C in terms of habitat quality in the end-state. However, accomplishment of this end-state requires additional manpower and the inclusion of trained staff (botanists) with each crew who can direct the application of control methods to achieve the desired end-state.

Public Involvement

On January 23, 2017, a Notice of Intent (NOI) to prepare an EIS to address the management of vegetation on its transmission system was published in the **Federal Register**. The NOI initiated a public scoping period, which concluded on April 1, 2017.

In addition to the NOI in the **Federal Register**, TVA published information about the review and planning effort on TVA's project website, notified the media, and sent notices to numerous individuals, organizations, and intergovernmental partners with information about the review.

During scoping, TVA received fifteen comments related to use of herbicides and mechanical controls, and five comments regarding the use of border to border management. The remaining 33 comments identified issues to be addressed in the Programmatic EIS. These comments were considered and as a result, TVA added an additional alternative, Alternative D to be considered in the EIS.

The Draft PEIS was released to the public on August 8, 2018, and a notice of availability (NOA) including a request for comments on the Draft PEIS, was published in the **Federal Register** on August 17, 2018. Publication of the NOA in the **Federal Register** opened the 45-day comment period, which ended on October 1, 2018. To solicit public input, the availability of the Draft PEIS was announced in regional and local newspapers and a news release was issued to the media and posted to TVA's website and hard copies were made available by request.

TVA's agency involvement included circulation of the Draft PEIS to local, state, and federal agencies and federally recognized Indian tribes as part of the review. The NPS and the USFS served as cooperating agencies in this review.

During the public comment period on the Draft PEIS, TVA conducted seven public meetings across the Valley. Notification of the public meetings was published in local newspapers and on TVA's project website.

TVA received 150 comment submissions from members of the public, organizations and state and federal agencies. Comment submissions were carefully reviewed and compiled into main topics which received general responses. More specific public comments, local group comments, and agency comments received individual responses. The most frequently mentioned topics included comments regarding keeping the ''old'' vegetation management policy, project purpose and need, private property concerns, project costs and use of herbicides. Additional comments regarding climate change, compatible vegetation, BMPs, and expressing preference for a particular alternative were also received. TVA provided responses to these comments, made appropriate minor revisions to the Draft EIS and issued this Final EIS.

The NOA for the Final EIS was published in the **Federal Register** on August 30, 2019.

Decision

TVA has decided to implement the preferred alternative, Alternative C, which would include implementing a process of vegetation community conversion within the full extent of the actively managed transmission ROW. This alternative is considered to provide the best balance in enhancing system reliability and safety, minimization of environmental impacts, and striving for cost effectiveness.

Mitigation Measures

Mitigation measures to avoid, minimize, or reduce adverse impacts to the environment are summarized below. Any additional project-specific mitigation measures, such as avoiding areas identified from desktop reviews as having a high probability of any sensitive resources, would be identified on a site-specific basis.

TVA has prepared comprehensive standard BMPs that represent mitigation measures that are effective in avoiding, minimizing, rectifying and compensating for effects of vegetation management activities. These BMPs are detailed in TVA's guide for environmental and best management practices. Topics addressed in this manual include the following:

- Best Management Practices for Construction and Maintenance Activities including Vegetation Management.
- Sensitive Resources and Buffer Zones.
- Structural Controls, Standards and Specifications.
- Seeding/Stabilization Techniques.
- Practices and procedures are provided that directly relate to the vegetation management activities including initial woody vegetation removal, good housekeeping, waste disposal, herbicide use, and stormwater discharge management.
- Integration of TVA's O–SAR process.

Any additional project-specific mitigation measures, such as avoiding areas identified from desktop reviews as having a high probability of any sensitive resources, would be identified on a site-specific basis.

Dated: October 3, 2019.

James R. Dalrymple,

Senior Vice President, Transmission, Power Supply & Support, Tennessee Valley Authority.

[FR Doc. 2019–22243 Filed 10–17–19; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2019–0003]

Technical Adjustments to Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of technical adjustments.

SUMMARY: In a notice published on October 9, 2019 (October 9th Notice), the U.S. Trade Representative determined to take action in this 301 investigation in the form of additional duties on products of certain member States of the European Union, effective October 18, 2019. This Notice makes technical changes in order to implement the intended scope of the action, and to correct other errors.

DATES: The technical changes as set out in Annex A to this Notice are applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 18, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Assistant General Counsel Megan Grimball, (202) 395–5725. For questions on customs classification of products covered by this action, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: For background on the proceedings in this

investigation, please see the prior notices issued in the investigation including 84 FR 15028 (April 12, 2019), 84 FR 32248 (July 5, 2019), and 84 FR 54245 (October 9, 2019).

In the October 9th notice (84 FR 54245), the U.S. Trade Representative announced his determination to impose additional duties on products of certain member States of the European Union, effective October 18, 2019. For certain products defined in Annex A of October 9th notice, the determination included a decision to impose additional duties on only a subset of products within specified subheadings of the Harmonized Tariff Schedule of the United States (HTSUS).

To address technical limitations in the administration of the additional duties on a portion of products of a covered subheading, Paragraph 1 of Annex A of this Notice creates additional Chapter 99 numbers to identify the portion of the subheadings *not* covered by the October 9 action. Paragraph 2 of Annex A makes conforming changes to account for the creation of the additional Chapter 99 numbers. Customs and Border Protection will issue instructions on entry guidance and implementation.

Paragraph 3 of Annex A to this Notice removes one subheading, which had been included due to a clerical error, from the list of subheadings in Annex A of the October 9th Notice.

Paragraph 4 of Annex A to this Notice corrects typographical errors in U.S. Note 21 (m) to subchapter III of Chapter 99, as set out in Annex A of the October 9th Notice.

Paragraph 5 of the Annex A to this Notice corrects the article of description for 9903.89.05 as set out in Annex A of the October 9th Notice.

Annex B contains the list of tariff subheadings, with unofficial descriptions, covered by the October 9th action as amended by this Notice.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

ANNEX A

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight savings time on October 18, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as provided herein, with the material in the following new tariff provisions inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively, and with the article descriptions each inserted at the first level of indentation as shown herein:

1. The following new provisions are inserted in numerical sequence in subchapter III of chapter 99:

Heading/ Subheading		Article description	Rates of Duty		
			1		2
			General	Special	
		[Articles the product of France, of Germany, of Spain or of the United Kingdom:]			
"9903.89.07		Airplanes and other aircraft, of an unladen weight exceeding 15,000 kg (provided for in subheading 8802.40.00), the foregoing not described in subheading 9903.89.05.....	The duty provided In the applicable subheading		
9903.89.50		[Articles the product of the United Kingdom:] Irish and Scotch Whiskies (provided for in subheading 2208.30.30), the foregoing not described in subheading 9903.89.49.....	The duty provided In the applicable subheading"		

2. U.S. note 21(a) to such subchapter is modified by deleting "9903.89.49" and by inserting in lieu thereof at each occurrence "9903.89.50".

3. U.S. note 21(d) to such subchapter is modified by deleting "0406.90.14".

4. U.S. note 21(m) to such subchapter is modified by deleting "1604.49.20" and by inserting in lieu thereof "1602.49.20".

5. The Article Description of subheading 9903.89.05 is amended by deleting "8802.40.070" and inserting in lieu thereof "8802.40.0070".

ANNEX B

Note: The product descriptions that are contained this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action, except as specified below. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. Any questions regarding the scope of particular HTS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

Part 1 – Products of France, Germany, Spain, or the United Kingdom described below are subject to additional import duties of 10 percent ad valorem:

Note: For purposes of the 8-digit subheading of HTS listed below, the product description defines and limits the scope of the proposed action.

HTS Subheading	Product Description
8802.40.00**	New airplanes and other new aircraft, as defined in U.S. note 21(b), (other than military airplanes or other military aircraft), of an unladen weight exceeding 30,000 kg (described in statistical reporting numbers 8802.40.0040, 8802.40.0060 or 8802.40.0070)

**Only a portion of HS8 digit is to be covered

Part 2 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0403.10.50	Yogurt, in dry form, whether or not flavored or containing add fruit or cocoa, not subject to gen nte 15 or add. US nte 10 to Ch.4
0403.90.85	Fermented milk o/than dried fermented milk or o/than dried milk with added lactic ferments
0403.90.90	Curdled milk/cream/kephir & other fermented or acid. milk/cream subject to add US note 10 to Ch.4
0405.20.20	Butter substitute dairy spreads, over 45% butterfat weight, subject to quota pursuant to chapter 4 additional US note 14
0406.10.28	Fresh (unripened/uncured) cheddar cheese, cheese/subs for cheese cont or proc from cheddar cheese, not subj to Ch4 US note 18, not GN15
0406.10.54	Fresh (unripened/uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, subj to Ch4 US nte 21, not GN15
0406.10.58	Fresh (unrip./uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, not subj to Ch4 US note 21 or GN15
0406.10.68	Fresh (unripened/uncured) Swiss/emmentaler cheeses exc eye formation,

HTS Subheading	Product Description
	gruyere-process cheese and cheese cont or proc. from such, not subj ..
0406.20.51	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, subject to add US note 21 to Ch.4
0406.20.53	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, not subj to Ch4 US nte 21 or GN15
0406.20.69	Cheese containing or processed from american-type cheese (except cheddar), grated or powdered, subject to add US note 19 to Ch. 4
0406.20.77	Cheese containing or processed from italian-type cheeses made from cow's milk, grated or powdered, subject to add US note 21 to Ch. 4
0406.20.79	Cheese containing or processed from italian-type cheeses made from cow's milk, grated or powdered, not subject to add US note 21 to Ch. 4
0406.20.87	Cheese (including mixtures), nesoi, n/o 0.5% by wt. of butterfat, grated or powdered, not subject to add US note 23 to Ch. 4
0406.20.91	Cheese (including mixtures), nesoi, o/0.5% by wt of butterfat, w/cow's milk, grated or powdered, not subject to add US note 16 to Ch. 4
0406.30.05	Stilton cheese, processed, not grated or powdered, subject to add US note 24 to Ch. 4
0406.30.18	Blue-veined cheese (except roquefort), processed, not grated or powdered, not subject to gen. note 15 or add. US note 17 to Ch. 4
0406.30.28	Cheddar cheese, processed, not grated or powdered, not subject to gen note 15 or in add US note 18 to Ch. 4
0406.30.34	Colby cheese, processed, not grated or powdered, subject to add US note 19 to Ch. 4
0406.30.38	Colby cheese, processed, not grated or powdered, not subject to gen note 15 or add US note 19 to Ch. 4
0406.30.55	Processed cheeses made from sheep's milk, including mixtures of such cheeses, not grated or powdered
0406.30.69	Processed cheese cont/procd fr american-type cheese (ex cheddar), not grated/powdered, subject to add US note 19 to Ch. 4, not GN15
0406.30.79	Processed cheese cont/procd from italian-type, not grated/powdered, not subject to add US note 21 to Ch. 4, not GN15
0406.40.44	Stilton cheese, nesoi, in original loaves, subject to add. US note 24 to Ch. 4
0406.40.48	Stilton cheese, nesoi, not in original loaves, subject to add. US note 24 to Ch. 4
0406.90.32	Goya cheese from cow's milk, not in original loaves, nesoi, not subject to gen. note 15 or to add. US note 21 to Ch. 4
0406.90.43	Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, not from cow's milk, not subject to gen. note 15
0406.90.52	Colby cheese, nesoi, subject to add. US note 19 to Ch. 4 and entered pursuant to its provisions
0406.90.54	Colby cheese, nesoi, not subject to gen. note 15 or to add. US note 19 to Ch. 4
0406.90.68	Cheeses & subst. for cheese(incl. mixt.), nesoi, w/romano/reggiano/parmesan/provolone/etc, f/cow milk, not subj. Ch4 US note 21, not GN15

HTS Subheading	Product Description
0406.90.72	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, subj. to add. US note 17 to Ch.4, not GN15
0406.90.74	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, not subj. to add. US note 17 to Ch.4, not GN15
0406.90.82	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from Am. cheese except cheddar, subj. to add. US note 19 to Ch.4, not GN15
0406.90.92	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, not subj. Ch4 US note 22, not GN15
0406.90.94	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/butterfat n/o 0.5% by wt, not subject to add. US note 23 to Ch. 4, not GN15
0805.10.00	Oranges, fresh or dried
0805.21.00	Mandarins and other similar citrus hybrids including tangerines, satsumas, clementines, wilkings, fresh or dried
0805.22.00	Clementines, fresh or dried, other
0805.50.20	Lemons, fresh or dried
0812.10.00	Cherries, provisionally preserved, but unsuitable in that state for immediate consumption
0813.40.30	Cherries, dried
1602.49.10	Prepared or preserved pork offal, including mixtures
1605.53.05	Mussels, containing fish meats or in prepared meals
1605.56.05	Products of clams, cockles, and arkshells containing fish meat; prepared meals
1605.56.10	Razor clams, in airtight containers, prepared or preserved, nesoi
1605.56.15	Boiled clams in immediate airtight containers, the contents of which do not exceed 680 g gross weight
1605.56.20	Clams, prepared or preserved, excluding boiled clams, in immediate airtight containers, nesoi
1605.56.30	Clams, prepared or preserved, other than in airtight containers
1605.56.60	Cockles and arkshells, prepared or preserved
1605.59.05	Products of molluscs nesoi containing fish meat; prepared meals of molluscs nesoi
1605.59.60	Molluscs nesoi, prepared or preserved

Part 3 – Products of Germany, Spain, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0203.29.40	Frozen meat of swine, other than retail cuts, nesoi
0404.10.05	Whey protein concentrates
0406.10.84	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, o/0.5% by wt. of butterfat, descr in add US note 16 to Ch 4, not GN15
0406.10.88	Fresh cheese, and substitutes for cheese, cont. cows milk, neosi, o/0.5% by wt. of butterfat, not descr in add US note 16 to Ch 4, not GN 15
0406.10.95	Fresh cheese, and substitutes for cheese, not cont. cows milk, neosi, o/0.5% by

HTS Subheading	Product Description
	wt. of butterfat
0406.90.16	Edam and gouda cheese, nesoi, subject to add. US note 20 to Ch. 4
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating
1509.10.20	Virgin olive oil and its fractions, whether or not refined, not chemically modified, weighing with the immediate container under 18 kg
1509.90.20	Olive oil, other than virgin olive oil, and its fractions, not chemically modified, weighing with the immediate container under 18 kg
2005.70.12	Olives, green, not pitted, in saline, not ripe
2005.70.25	Olives, green, in a saline solution, pitted or stuffed, not place packed

Part 4 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add fruit or cocoa
0405.10.10	Butter subject to quota pursuant to chapter 4 additional US note 6
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6
0406.30.89	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add US note 16 to Ch. 4, not GN15
0406.90.99	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cows milk, w/butterfat o/0.5% by wt, not GN15
0811.90.80	Fruit, nesoi, frozen, whether or not previously steamed or boiled
1601.00.20	Pork sausages and similar products of pork, pork offal or blood; food preparations based on these products
2008.60.00	Cherries, otherwise prepared or preserved, nesoi
2008.70.20	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included
2008.97.90	Mixtures of fruit or other edible parts of plants, otherwise prepared or preserved, nesoi (excluding tropical fruit salad)
2009.89.65	Cherry juice, concentrated or not concentrated
2009.89.80	Juice of any single vegetable, other than tomato, concentrated or not concentrated

Part 5 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0405.20.30	Butter substitute dairy spreads, over 45% butterfat weight, not subj to gen note 15 and in excess of quota in ch. 4 additional US note 14
0405.20.80	Other dairy spreads, not butter substitutes or of a type provided for in chapter 4 additional US note 1
0406.30.85	Processed cheese (incl. mixtures), nesoi, n/o 0.5% by wt. butterfat, not grated or powdered, subject to Ch4 US note 23, not GN15
0406.90.78	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from cheddar cheese, not subj. to add. US note 18 to Ch.4, not GN15
1602.41.90	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, nesoi
1602.42.20	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
1602.42.40	Prepared or preserved pork shoulders and cuts thereof, other than boned and cooked and packed in airtight containers
1602.49.40	Prepared or preserved pork, not containing cereals or vegetables, nesoi
1602.49.90	Prepared or preserved pork, nesoi

Part 6 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional US note 14
0406.30.51	Gruyere-process cheese, processed, not grated or powdered, subject to add. US note 22 to Ch. 4
0406.30.53	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 22 to Ch. 4
0406.40.54	Blue-veined cheese, nesoi, in original loaves, subject to add. US note 17 to Ch. 4
0406.90.08	Cheddar cheese, neosi, subject to add. US note 18 to Ch. 4
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to add. US note 18 to Ch. 4
0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. US note 21 to Ch. 4
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to GN 15 or Ch4 US note 21
0406.90.48	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to add. US note 25 to Ch. 4
0406.90.90	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, subj. to add. US note 22 to Ch.4, not GN15

HTS Subheading	Product Description
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, not subject to Ch4 US note 16, not GN15
1605.53.60	Mussels, prepared or preserved
2007.99.70	Currant and berry fruit jellies
2008.40.00	Pears, otherwise prepared or preserved, nesoi
2009.89.20	Pear juice, concentrated or not concentrated
2009.89.40	Prune juice, concentrated or not concentrated

Part 7 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.46	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. US note 25 to Ch. 4

Part 8 – Products of Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating

Part 9 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 16 (quota)

Part 10 – Products of France, Germany, Spain or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0711.20.18	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, subject to add. US note 5 to Ch. 7

HTS Subheading	Product Description
0711.20.28	Olives, n/pitted, green, in saline sol., in contain. > 8 kg, drained wt, for repacking or sale, not subject to add. US note 5 to Ch. 7
0711.20.38	Olives, n/pitted, nesoi
0711.20.40	Olives, pitted or stuffed, provisionally preserved but unsuitable in that state for immediate consumption
2005.70.08	Olives, green, not pitted, in saline, not ripe, in containers holding o/8 kg for repkg, not subject to add. US note 4 to Ch. 20
2005.70.16	Olives, green, in saline, place packed, stuffed, in containers holding n/o 1 kg, aggregate quantity n/o 2700 m ton/yr
2005.70.23	Olives, green, in saline, place packed, stuffed, not in containers holding 1 kg or less
2204.21.50	Wine other than Tokay (not carbonated), not over 14% alcohol, in containers not over 2 liters

Part 11 – Products of Germany described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
0901.21.00	Coffee, roasted, not decaffeinated
0901.22.00	Coffee, roasted, decaffeinated
2101.11.21	Instant coffee, not flavored
8201.40.60	Axes, bill hooks and similar hewing tools (o/than machetes), and base metal parts thereof
8203.20.20	Base metal tweezers
8203.20.60	Pliers (including cutting pliers but not slip joint pliers), pincers and similar tools
8203.30.00	Metal cutting shears and similar tools, and base metal parts thereof
8203.40.60	Pipe cutters, bolt cutters, perforating punches and similar tools, nesoi, and base metal parts thereof
8205.40.00	Screwdrivers and base metal parts thereof
8211.93.00	Knives having other than fixed blades
8211.94.50	Base metal blades for knives having other than fixed blades
8467.19.10	Tools for working in the hand, pneumatic, other than rotary type, suitable for metal working
8467.19.50	Tools for working in the hand, pneumatic, other than rotary type, other than suitable for metal working
8468.80.10	Machinery and apparatus, hand-directed or -controlled, used for soldering, brazing or welding, not gas-operated
8468.90.10	Parts of hand-directed or -controlled machinery, apparatus and appliances used for soldering, brazing, welding or tempering
8514.20.40	Industrial or laboratory microwave ovens for making hot drinks or for cooking or heating food
9002.11.90	Objective lenses and parts & access. thereof, for cameras, projectors, or photographic enlargers or reducers, except projection, nesoi

Part 12 – Products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
1602.49.20	Pork other than ham and shoulder and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers

Part 13 – Products of Germany or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
1905.31.00	Sweet biscuits
1905.32.00	Waffles and wafers
4901.10.00	Printed books, brochures, leaflets and similar printed matter in single sheets, whether or not folded
4908.10.00	Transfers (decalcomanias), vitrifiable
4911.91.20	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.30	Lithographs on paper or paperboard, over 0.51 mm in thickness, printed not over 20 years at time of importation
4911.91.40	Pictures, designs and photographs, excluding lithographs on paper or paperboard, printed not over 20 years at time of importation
8429.52.10	Self-propelled backhoes, shovels, clamshells and draglines with a 360 degree revolving superstructure
8429.52.50	Self-propelled machinery with a 360 degree revolving superstructure, other than backhoes, shovels, clamshells and draglines
8467.29.00	Electromechanical tools for working in the hand, other than drills or saws, with self-contained electric motor

Part 14 – Products of Germany, Ireland, Italy, Spain, or the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

HTS Subheading	Product Description
2208.70.00	Liqueurs and cordials

Part 15 – Products of the United Kingdom described below are subject to additional import duties of 25 percent ad valorem:

Note: For purposes of 2208.30.30, the product description defines and limits the scope of the proposed action.

HTS Subheading	Product Description
2208.30.30**	Single-malt Irish and Scotch Whiskies (described in 2208.30.30)
6110.11.00	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of wool
6110.12.10	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of Kashmir goats, wholly of cashmere
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
6110.30.30	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
6202.99.15	Rec perf outwear, women's/girls' anoraks, wind-breakers & similar articles, not k/c, tex mats (not wool, cotton or mmf), cont < 70% by wt of silk
6202.99.80	Women's/girls' anoraks, wind-breakers & similar articles, not k/c, of tex mats (not wool, cotton or mmf), cont < 70% by wt of silk,
6203.11.60	Men's or boys' suits of wool, not knitted or crocheted, nesoi, of wool yarn with average fiber diameter of 18.5 micron or less
6203.11.90	Men's or boys' suits of wool or fine animal hair, not knitted or crocheted, nesoi
6203.19.30	Men's or boys' suits, of artificial fibers, nesoi, not knitted or crocheted
6203.19.90	Men's or boys' suits, of textile mats(except wool, cotton or mmf), containing under 70% by weight of silk or silk waste, not knit or croch
6208.21.00	Women's or girls' nightdresses and pajamas, not knitted or crocheted, of cotton
6211.12.40	Women's or girls' swimwear, of textile materials(except mmf), containing 70% or more by weight of silk or silk waste, not knit or crocheted
6211.12.80	Women's or girls' swimwear, of textile materials(except mmf), containing under 70% by weight of silk or silk waste, not knit or crocheted
6301.30.00	Blankets (other than electric blankets) and traveling rugs, of cotton
6301.90.00	Blankets and traveling rugs, nesoi
6302.21.50	Bed linen, not knit or crocheted, printed, of cotton, cont any embroidery, lace, braid, edging, trimming, piping or applique work, n/napped
6302.21.90	Bed linen, not knit or croc, printed, of cotton, not cont any embroidery, lace, braid, edging, trimming, piping or applique work, not napped

**Only a portion of HS8 digit is to be covered

[FR Doc. 2019–22902 Filed 10–16–19; 4:15 pm]
BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement for a Multimodal Project in Allston, Massachusetts

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

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that it is preparing an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the Allston Multimodal Project sponsored by the Massachusetts Department of Transportation (MassDOT). MassDOT proposes to address roadway deficiencies of Interstate 90 in Allston, Massachusetts. The proposed project takes into consideration current transportation deficiencies, current and future transportation facility safety, multimodal mobility, and access to the Charles River Reservation within the project area.

FOR FURTHER INFORMATION CONTACT: Jeffrey McEwen, Division Administrator, Federal Highway Administration, 55 Broadway, 10th Floor, Cambridge, Massachusetts 02142, Phone: 617–494–1788. Michael O'Dowd, Acting Director of Bridge Project Management, Massachusetts Department of Transportation, 10 Park Plaza, Suite 6340, Boston, Massachusetts 02116, Phone: 857–368–9292.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Department of Transportation, will prepare an Environmental Impact Statement (EIS) for the Allston Multimodal Project. The FHWA intends to issue a combined Final EIS/ROD document pursuant to 23 CFR 771.124, unless FHWA determines the regulatory criteria or practicability considerations preclude issuance of a combined document.

The purpose of the project is to address roadway deficiencies, address safety issues, improve mobility of Interstate 90 mainline and Interstate 90 interchanges 18, 19, and 20, and improve multimodal transportation

access to and within the Charles River Reservation. Proposed improvements are needed within the project area due to existing roadway deficiencies which include a structurally deficient viaduct on the Interstate 90 mainline and substandard geometric elements on both the mainline and within the interchange; existing safety deficiencies which include substantially higher than average crash rates for the mainline and the interchange; existing mobility deficiencies which include a deficient level-of-service within the interchange, commuter rail limitations, lack of multimodal connections, and inadequate bicycle and pedestrian facilities; and limited multimodal access to the Charles River Reservation.

The EIS will evaluate a range of build alternatives and a no-build alternative. Possible build alternatives include improvements to the roadway network to incorporate improvements to transit, rail, bus, bicycle and pedestrian facilities.

The EIS will evaluate potential impacts from construction and operation of the proposed project, including, but not limited to, the following: Traffic impacts, air quality and noise impacts; water quality impacts including stormwater runoff; impacts to waters of the United States; impacts to floodplains; impacts to historic and archaeological resources; socio-economic impacts including environmental justice and limited English proficiency populations; impacts to land use, vegetation and wildlife; impacts to or potential displacement of residents and businesses; and impacts to aesthetic and visual resources. Anticipated state and Federal approvals may include, but are not limited to, the following: United States Army Corps of Engineers (USACE) Section 404 of the Clean Water Act permit, USACE Section 10 of the Rivers and Harbors Act Permit, United States Coast Guard (USCG) Section 9 Bridge Permit, Massachusetts Department of Environmental Protection (MassDEP) Section 401 Water Quality Certification, MassDEP Chapter 91 License, MassDEP Wetlands Protection Act Permit, Advisory Council on Historic Preservation (ACHP) Section 106 of the National Historic Preservation Act consultation, and Section 4(f) of the U.S. Department of Transportation Act evaluation. The project will comply with the Clean Air Act, Title VI of the Civil Rights Act, and Executive Order 12898 ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' and other applicable state and Federal laws. Cooperating Agencies identified include the USACE, USCG, U.S. Department of Transportation's Federal Transit Administration, U.S. Environmental Protection Agency, MassDEP, and the Massachusetts Department of Conservation and Recreation.

Public involvement is a critical component of the project development process and will continue throughout the development of the EIS. All individuals and organizations expressing interest in the project will be able to participate in the process through various public outreach opportunities. These opportunities include, but are not limited to public meetings and hearing(s), the project website (*https://www.mass.gov/allston-multimodal-project*), and press releases. Public notice will be given of the time and place of all public meetings and hearing(s). To ensure that the full range of issues related to this proposed project are addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties. Scoping input on the proposed project will be invited during the scoping review period and through public informational meetings, which will occur after release of the Scoping Report. Advanced notice of release of the Scoping Report and date, time and location of the public informational meetings will be provided to the public through the project website, public notices, and press releases. Such comments or questions concerning this notice, the scope of the EIS including the purpose and need, alternatives to be considered, and impacts to be evaluated may be submitted via the project website or in writing to FHWA or MassDOT at the addresses provided above.

Issued on: October 9, 2019.

Jeffrey McEwen,

Massachusetts Division Administrator, Federal Highway Administration.

[FR Doc. 2019–22796 Filed 10–15–19; 4:15 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019–0021]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before November 18, 2019.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 18, 2019, FTA published a 60-day notice (84 FR 34475) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments from that publication. Accordingly, DOT announces that these information collection activities have been re-

evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: National Transit Database 49 U.S.C. Section 5335(a)(b).

OMB Control Number: 2132–0008.

Type of Request: Renewal of a previously approved information collection.

Abstract: 49 U.S.C. 5335(a) and (b) requires the Secretary of Transportation to maintain a reporting system, using a uniform system of accounts, to collect financial and operating information from the nation's public transportation systems. Congress created the NTD to be the repository of transit data for the nation to support public transportation service planning. FTA has established the NTD to meet these requirements, and has collected data for over 35 years. The NTD is comprised of four modules, Rural, Urban Annual, Monthly, and Safety Event Reporting. FTA continues to seek ways to reduce the burden of NTD reporting. FTA has added upload/download capabilities to the reporting system and greatly reduced the sampling required to certify Automatic Passenger Counters for use in reporting data to the NTD.

Respondents: State or local governmental entities that operates a public transportation service.

Estimated Annual Number of Respondents: 2,334.

Estimated Total Annual Burden: 327,524.

Frequency: Annual.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019–22743 Filed 10–17–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019–0022]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before November 18, 2019.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov*.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590, (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 31, 2019, FTA published a 60-day notice (84 FR 37388) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments from that notice.

Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: National Transit Asset Management (TAM) System.

OMB Control Number: 2132–0579.

Type of Request: Renewal of a previously approved information collection.

Abstract: Transit asset management (TAM) is a business model that prioritizes funding based on the condition of transit assets to achieve and maintain a state of good repair for the nation's public transportation assets. Federal requirements for transit asset management applies to all recipients and sub-recipients of chapter 53 funds

that own, operate, or manage public transportation capital assets. It is a framework for transit agencies to monitor and manage public transportation assets, improve safety, increase reliability and performance, and establish performance measures in order to help agencies keep their systems operating smoothly and efficiently. Transit agencies are required to develop TAM plans and submit their performance measures and targets to the National Transit Database.

Respondents: All recipients and sub-recipients of chapter 53 funds that own, operate, or manage public transportation capital assets.

Respondents: All recipients and sub-recipients of chapter 53 funds that own, operate, or manage public transportation capital assets.

Estimated Annual Number of Respondents: 2,878.

Estimated Annual Number of Responses: 987.

Estimated Total Annual Burden: 404,233.

Frequency: Annual.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019–22742 Filed 10–17–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019–0024]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection:

49 U.S.C. 5307 Urbanized Area Formula Program

DATES: Comments must be submitted before December 17, 2019.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (*Note:* The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Tara Clark, Office of Program Management (202) 366–2623 or *Tara.Clark@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5307 Urbanized Area Formula Program (OMB Number: 2132–0502).

Background: The Urbanized Area Formula Funding program (49 U.S.C. 5307) makes federal resources available to urbanized areas and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. An urbanized area is an incorporated area with a population of 50,000 or more that is designated as such by the U.S. Department of Commerce, Bureau of the Census. Funding is made available to designated recipients that are public bodies with the legal authority to receive and dispense federal funds. Governors, responsible local officials and publicly owned operators of transit services shall designate a recipient to apply for, receive, and dispense funds for urbanized areas. The governor or governor's designee acts as the designated recipient for urbanized areas between 50,000 and 200,000. For urbanized areas with 200,000 in population and over, funds are apportioned and flow directly to a designated recipient selected locally to apply for and receive Federal funds. For urbanized areas under 200,000 in population, the funds are apportioned to the governor of each state for distribution. Eligible activities include: Planning, engineering, design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement, overhaul and rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. In addition, associated transit improvements and certain expenses associated with mobility management programs are eligible under the program. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service costs are considered capital costs.

Respondents: State or local governmental entities that operates a public transportation service.

Estimated Annual Number of Respondents: 6,240.

Estimated Total Annual Burden: 117,000 hours.

Frequency: Annual.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019–22744 Filed 10–17–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0103]

Audi of America; Receipt of Petition for Temporary Exemption From FMVSS No. 111

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for temporary exemption from FMVSS No. 111, ''Rear Visibility''; request for comment.

SUMMARY: In accordance with the procedures in 49 CFR part 555, Audi of America (''Audi'') has petitioned NHTSA for a temporary exemption of vehicles from the requirements in FMVSS No. 111 that passenger cars, MPVs, and light trucks be equipped with an outside mirror on the driver's side that meets certain field-of-view and mounting requirements. Instead of being equipped with FMVSS No. 111-compliant outside mirrors that would provide the required view to the rear, the vehicles, if exempted, would be equipped with a Camera Monitor System (CMS) that, according to Audi, provides the driver with a video-generated image on a monitor. Audi states that the video-generated image meets the standard's field-of-view requirements that apply to outside mirrors on the driver's side. Audi submitted its petition on the basis that an exemption is needed to facilitate the development and field evaluation of a new motor vehicle safety feature (the CMS) and that that feature provides a level of safety at least equal to the level of safety would be provided if the vehicle were equipped with FMVSS-compliant outside mirrors. NHTSA is publishing this document in accordance with statutory and administrative provisions, and requests comments on the petition. NHTSA has made no judgment on the merits of the petition.

DATES: Comments on this petition must be submitted by November 18, 2019.

FOR FURTHER INFORMATION CONTACT: Daniel Koblenz, Office of Chief Counsel, Telephone: 202–366–2992, Facsimile: 202–366–3820 or Markus Price, Office of Crash Avoidance Standards, Telephone: 202–366–1810, Facsimile: 202–493–2990. The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

This document by any of the following methods:

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

Regardless of how you submit your comments, please mention the docket number of this document.

You may also call the Docket at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making 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.transportation.gov/privacy.* In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

SUPPLEMENTARY INFORMATION:

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I. Background

a. FMVSS No. 111 Outside Mirror Requirement

Federal Motor Vehicle Safety Standard (FMVSS) No. 111, ''Rear Visibility,'' sets out requirements to ensure that passenger cars, Multipurpose Passenger Vehicles (MPVs), trucks, and buses, school buses, and low-speed vehicles provide drivers with ''a clear and reasonably unobstructed view to the rear'' of the vehicle. To this end, FMVSS No. 111, S5.2 requires that passenger cars must be equipped with an outside rearview mirror on the driver's side. This mirror must provide the driver with a specified minimum field of view, be of unit magnification, and must be mounted according to certain specifications.[1] Similarly, FMVSS No. 111 S6 requires that MPVs, trucks, and buses (other than a school bus) with a Gross Vehicle Weight Rating of 4,536 kg or less be equipped with outside mirrors to provide rear visibility. Vehicles subject to S6 are required either to use ''mirrors that conform to the requirements of S5,'' [2] or to be equipped with mirrors on both sides of the vehicle which meet specified criteria for size and placement. Currently, FMVSS No. 111 does not permit compliance with either S5.2 or S6 through equipment other than ''an outside mirror.'' [3]

b. Statutory Authority and Regulatory Requirements

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified

[1] S5.2 requires that vehicles be equipped with a driver side outside mirror.

[2] Note that S5 includes both an inside (S5.1) and outside (S5.2) mirror requirement.

[3] NHTSA notes, however, that FMVSS does not prohibit the use of other technologies (such as cameras) alongside mirrors, so long as compliant required mirrors are present. NHTSA recently published an ANPRM seeking comment on whether the agency should consider amending FMVSS No. 111 to permit cameras as a compliance option in lieu of mirrors. See 84 FR 54533.

as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard, ''on terms the Secretary considers appropriate.'' This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA. 49 CFR part 1.95.

The Safety Act authorizes the Secretary to grant a temporary exemption to a vehicle manufacturer if the Secretary makes certain findings. For this petition, the relevant findings that the Secretary must make are:

(1) The exemption is consistent with the public interest and with the objectives of 49 U.S.C. chapters 301 (Motor Vehicle Safety) or 325 (Bumper Standards) (as applicable); and

(2) The exemption ''would facilitate the development or field evaluation of a new motor vehicle safety feature that provides a level of safety equivalent to that of the standard.'' [4]

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. The petition content requirements, specified in 49 CFR 555.5, state that a petitioner must set forth the basis of the application by providing the required information under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A petition under the basis that the exemption would facilitate the development or field evaluation of a new motor vehicle safety feature that provides a level of safety equivalent to that of the standard must include the information specified in 49 CFR 555.6(b). The main requirements of that section include: (1) A description of the safety or impact protection features, and research, development, and testing documentation establishing the innovational nature of such features; (2) an analysis establishing that the level of safety or impact protection of the feature is equivalent to or exceeds the level of safety or impact protection established in the standard(s) from which exemption is sought; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; and (4) a statement of whether the Audi intends to conform to the standard at the end of the exemption period.

[4] 49 U.S.C. 30113(b)(3).

II. Summary of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Audi of America and its parent company, Audi AG (collectively, ''Audi'') [5] submitted a petition to NHTSA (received August 7, 2018) requesting a temporary exemption from the driver's side outside rearview mirror requirements in sections S5.2, S5.2.1, S5.2.2, and S6 of FMVSS No. 111. The vehicles for which Audi is requesting an exemption would be fully electric multipurpose passenger vehicles (MPVs). In lieu of mirrors, Audi states that the exempted vehicles would be equipped with a Camera Monitoring System (CMS) that provides the driver with the same field of view as a compliant outside rearview mirror. Audi requests a two-year exemption, during which it asks to be permitted to sell 2,500 exempted vehicles for each 12-month period covered by the exemption (up to 5,000 vehicles). Audi does not intend to make its vehicles compliant with FMVSS No. 111 by the end of the exemption period, but notes that it hopes that FMVSS No. 111 would be amended by then to permit CMS as a compliance option instead of outside rearview mirrors.

What follows is a summary of the information contained in Audi's petition. The petition itself is available for review in the docket for this notice. Audi's submission also included five additional supporting documents, which are cited as Attachments 1 through 5. While these supplemental documents are not independently summarized in this notice, they are available for review in the docket. Audi demonstrated the technology at NHTSA's headquarters on June 27, 2019 via an Audi e-tron model equipped with a CMS instead of outside mirrors, although NHTSA was told that the system shown in the demonstration had different specifications than the CMS that would be sold pursuant to an exemption. Because NHTSA had outstanding questions about the CMS that is the subject of Audi's exemption petition, NHTSA emailed Audi following this demonstration to request additional information. This information request and subsequent communications are also included in the docket, and the information that Audi provided is incorporated into this notice. Please note that this document is a notice of receipt which contains a description of Audi's petition, as well as some clarifying statements or questions from NHTSA. NHTSA has not yet made a final determination to grant or deny the petition.

[5] Audi of America is incorporated in Virginia, with its headquarters in Herndon, VA. Audi AG is incorporated in Germany, with its headquarters in Ingolstadt, Germany.

a. Recent CMS-Related Regulatory Activities

Audi begins by providing background on recent CMS-related regulatory activities in the United States. Audi explains that, in 2014, Tesla and the Alliance of Automobile Manufacturers jointly filed a rulemaking petition requesting that NHTSA amend FMVSS No. 111 to permit certification using CMS rather than outside rearview mirrors.[6] Audi states that, although NHTSA has not yet determined whether to amend FMVSS No. 111, an exemption to enable the company to conduct the research and development needed to introduce a mass-market CMS should NHTSA eventually decide to propose such an amendment.

Audi then provides background on international regulatory actions relating to CMS, focusing specifically on the international adoption of United Nations Economic Commission for Europe (UN ECE) Regulation 46 (R46).[7] R46 is an international type-approval standard that covers ''the approval of devices for indirect vision and of motor vehicles with regard to the installation of these devices.'' [8] In 2016, R46 was revised to permit the use of either mirrors or CMS on most new vehicles to meet rear-view requirements. According to Audi, roughly 50 countries, including Japan, have adopted the amended R46, and permit the use of CMS in lieu of

[6] Audi provided a copy of the Alliance/Tesla petition for rulemaking with this exemption petition. The rulemaking petition, designated ''Attachment 1,'' Can be found in the docket for this rulemaking. We note that, although NHTSA has not officially acted on this petition, the agency did respond to the petition by submitting a letter containing a number of questions to Tesla and Alliance requesting additional information that the agency believed would be necessary to determine whether rulemaking would be appropriate. A copy of this letter can be found in the docket. As of the publication of this notice, NHTSA has not received a reply to these questions.

[7] UN ECE R46 is a vehicle regulation established under the 1958 UN ECE Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (the ''1958 Agreement''). The 1958 Agreement is an international agreement that provides procedures for establishing uniform regulations regarding new motor vehicles and motor vehicle equipment and for reciprocal acceptance of type-approvals issued under these regulations by contracting countries. While the United States is a member of the UN ECE, it is not a contracting party to the 1958 Agreement, and thus is not bound by standards established under the 1958 Agreement.

[8] See *https://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2016/R046r6e.pdf.*

outside mirrors.[9] Audi also notes that Transport Canada requested comments on allowing camera-based rear visibility systems in October 2016. The petition states that Audi has received component-level type approval for the CMS, and is in the process of obtaining vehicle-level type approval by September 2018.[10] [11] Audi notes that its CMS's default view would meet the field-of-view requirements for Class III rear-view devices under ECE R46.[12]

b. Description of the CMS

Audi states that the CMS that would be installed on exempted vehicles would use two externally mounted cameras, which would be located at the base of the driver-side and passenger -side A-pillars (at the approximate location that outside mirrors are typically installed on vehicles). The cameras capture an image with a resolution of 1289x1080 pixels, and a refresh rate of 60 frames per second (FPS). The cameras include pan and zoom functionality, and the cameras' exterior lenses are equipped with heaters and are coated with anti-stick material to minimize camera obstruction due to environmental contaminants like water, dirt, or ice.

Audi states that each camera feeds into a control unit that performs the processing for all CMS functions, including converting camera data into an image, displaying the image on screens inside the vehicle (along with other warnings and system information [13]), and carrying out self-diagnostics to ensure the system functions properly. The CMS transmits the camera image to displays that are located near the top forward corner of the door, which are aimed toward the driver. Each display provides the image from the camera on the corresponding side of the vehicle. The displays are approximately 7 inches wide, and provide a resolution of 1280x800 with a refresh rate of 60 FPS.[14] The displays use a capacitive touch system, which the driver can use to interact with and manipulate the CMS, such as by adjusting the image aim and level of zoom. Audi states that the CMS meets the requirements of UN ECE R46, provides additional safety and convenience features.[15]

Audi states in the petition that the CMS meets the FMVSS No. 111 field of view (FOV) requirements for outside mirrors when operating in its ''default view.'' However, the petition did not say whether the CMS image in the default view would be of ''unit magnification'' (*i.e.,* not magnified), as is required under FMVSS No. 111, or whether the magnification level can be changed by the driver. In addition, the supporting documents that Audi submitted with the petition described three view modes other than the default view, which Audi calls Turnview, Parkview, and Highway view.[16] However, these other view modes are not discussed in the petition. Finally, the petition did not provide details on how the CMS detects and alerts the driver to camera obstructions.

To fill these information gaps, NHTSA sent Audi an email requesting additional information. Audi replied in an email sent August 1, 2019. In this email, Audi stated that the CMS's default view shows an image of ''unitary magnification (about 0.32) without a distortion.'' We understand this to mean that the CMS image would be magnified such that the it would be approximately ⅓ the size of the image produced by a planar mirror that meets the unit magnification requirement of FMVSS No. 111. Audi also stated that it is not possible for drivers to adjust the CMS's magnification manually. In addition, Audi provided details about the CMS's other view modes, which are summarized in the below table:

View mode	Activation of view mode	Deactivation of view mode	Audi's description of view
Turnview	Actuation of the turn signal operating unit.	Cancellation of the turn signal operating unit.	An aspherical zone with an enlarged field of view on the outer side of the view. Audi says this reduces the size of the blind spot.
Parkview	Switching to the ''reverse'' gear with vehicle speed less than 10 km/h.	Switching out of the ''reverse'' gear, or if the vehicle speed exceeds 10km/h.	An aspherical zone with an enlarged field of view on the lower side of the view. Audi says this view reduces the size of the blind spot for parking maneuvering.
Highwayview	The vehicle's navigation system indicates that the vehicle is on a highway, and vehicle speed is greater than 80 km/h.	The vehicle speed drops below 70 km/h, or the vehicle's navigation system indicates the vehicle has left the highway.	A smaller field of view that is magnified so that objects appear 2% larger. Audi says this enables better detection of fast-approaching vehicles on highways.

Regarding camera obstruction, Audi stated that the CMS uses continuously active video analytics to detect dirt. Audi also stated that the camera is equipped with a heater to clear obstructions, and if that does not work, the system provides the driver with a message in the instrument cluster that the camera needs to be cleaned.

The CMS is described in further detail in the petition and accompanying support documents, including NHTSA's email exchange with Audi. These documents are all available in the

[9] NHTSA has not taken a position on whether the amendments to ECE R46 that permit CMS provide a benefit to vehicle safety.

[10] Although the petition does not identify the country from which type approval is being sought, the test report the petition cites as documentation for type-approval appears to have been obtained from a laboratory based in Germany. For more information on the type-approval process, see *http://ec.europa.eu/growth/sectors/automotive/technical-harmonisation/faq-auto_en.*

[11] On October 30, 2018, NHTSA received from Audi supplemental documentation that it had received vehicle-level type approval for its CMS. The non-confidential portion of this documentation can be found in the docket.

[12] ECE R46, 15.2.4.3 states that a Class III mirror must provide a view of the road that is 4 meters wide when measured 20 meters back from the mirror, and 1 meter wide when measured 4 meters back from the mirror.

[13] Other functions include object detection, lane marking and warning, safe exit information, and blind spot detection.

[14] We note that the display resolution (1280x800) is lower than resolution of the image captured by the camera (1289x1080). The petition does not explain what effect (if any) this difference would have on the image displayed to the driver.

[15] Audi lists four additional safety features: Critical object detection, Marking and Warning, Safe Exit Information, and Blind Spot Detection. Audi does not provide information about the operation of these safety features.

[16] These views are described in the supporting document titled ''Attachment 3,'' which can be found in the docket for this petition.

docket indicated in the header of this notice.

c. Documentation Establishing Innovative Nature of the CMS

Audi provides information about three separate research efforts that Audi argues establish the innovative and safety-improving nature of CMS. Audi first discusses a 2015 study conducted by the German Federal Highway Research Institute (BASt), which Audi states investigated both technical and human-machine interface issues relating to CMS.[17] Audi states that this study concluded (among other things) that it is possible for a CMS to provide a ''quality'' rear view to the driver. Audi next summarizes a 2017 study that it jointly conducted with Spiegel Institut Mannheim [18] that examined the performance and user acceptability of CMS as compared to rearview mirrors by having study participants use a CMS in a variety of scenarios, both moving and stationary.[19] According to Audi, this study found that, while some participants initially expressed skepticism towards CMS, once the participants became familiar with the system, they found it performed comparably or better than conventional mirrors.

Lastly, Audi describes a Naturalistic Driving Study (NDS) that is currently being conducted in the United States by the Virginia Tech Transportation Institute (VTTI), in which five vehicle manufacturers (including Volkswagen Group, of which Audi is a part) and two ''Tier One'' suppliers are participating. Audi explains that this study will compare the performance and acceptance of CMS to that of rearview mirrors, but states that the research is ongoing and the results are not yet available.

In addition to these research projects, Audi also states that the CMS that would be equipped on exempted vehicles incorporates qualitative feedback that Audi obtained from NHTSA regarding an earlier version of its CMS.[20]

d. Audi Claims That the CMS Provides a Level of Safety At Least Equivalent to the Level of Safety Established by Compliance With FMVSS No. 111, and is in the Public Interest

According to Audi, exempted vehicles would have an equivalent level of safety to those that comply with FMVSS No. 111 because the CMS with which they would be equipped provides the driver with a view of the vehicle rear that is ''as good, if not better'' than the view available using traditional mirrors. The petition specifically notes that the CMS meets the field-of-view requirements for FMVSS No. 111-compliant outside rearview mirrors when in its default 35° field-of-view setting. Moreover, the CMS's field of view can be expanded to 43° at the driver's option.

As further evidence that the CMS would provide an equivalent level of safety to FMVSS No. 111-compliant outside mirrors, Audi states that its CMS meets the requirements of UN ECE R46, and that the CMS is designed to withstand 15 years of environmental exposure to wind, moisture, dirt, and other obstructions. Moreover, Audi states that the CMS includes features that mitigate possible lens obstructions, including a heated camera lens, and the use of a camera with a focus point well beyond the lens, which enables the lens to ''look past'' certain obstructions. Audi also states that, if an obstruction is sufficiently severe, the CMS will alert the driver to clear the obstruction from the camera. However, Audi does not provide details of how this obstruction detection system would work (alert threshold, detection reliability, etc.).

The petition notes that the three CMS studies that are cited (including the ongoing VTTI study) ''do not reveal a significant safety risk associated with CMS.'' Moreover, the petition states that Volkswagen sold 250 vehicles equipped with a CMS in 2013 in Germany and Austria pursuant to an exemption to Europe's standards. According to the petition, the customer feedback received was positive, with customers finding that, once they were familiar with the CMS, they found the system to be as good or better than rearview mirrors.

The petition also states that the CMS provides environmental benefits due to its lower weight and improved aerodynamics as compared to rearview mirrors. According to the petition, exempted vehicles equipped with a CMS would have an additional 1.5% battery range, or a 1 gram per kilometer decrease in CO_2 emissions, as compared to non-exempt vehicles with rearview mirrors. In addition, the petition notes that the CMS is included with additional features that provide safety information to the driver, including critical object detection, marking and warning, safe exit information, and blind-spot detection.[21] According to the petition, these features would enhance the safety of exempted vehicles to beyond what is required under the FMVSS.

e. Substantiation That an Exemption Would Facilitate Audi's Development and Field Evaluation of the CMS

Audi states that an exemption is necessary for the company to conduct a field evaluation of its CMS, through which it will obtain data on customer acceptance and system performance in situations unique to the US market. To accomplish this research, Audi states that it intends to collect feedback from purchasers of exempted vehicles throughout the duration of the exemption period. This feedback would be collected through a survey given to customers when they bring the vehicle in for service, as well as though Audi's customer care center.

III. Requests for Comment

NHTSA seeks comment on the information and analysis in Audi's petition. In particular, NHTSA is interested in the issues raised in the following questions:

1. Does the public agree with Audi's safety analysis generally?

2. Does Audi's petition provide sufficient information on the operation of Audi's CMS to enable NHTSA to make the findings required by statute to grant an exemption? If not, what additional information should the Audi provide, and why?

3. We seek comment on the safety impact of the CMS image being magnified by 0.32 times, as compared to a non-magnified image that would be produced by a compliant unit magnification mirror.

4. While the CMS's Turnview, Parkview, and Highwayview modes may provide the safety benefits that Audi cites in its petition, it is also possible that the switch to these alternative view modes could have negative impacts on safety, such as driver disorientation. Should the agency consider placing any restrictions on the use of these alternative view modes as a condition of granting the petition? If so, what should those conditions be, and what is the basis for those conditions?

[17] The Final Report on this study published by BASt can be found in the docket for this petition. (''Attachment 4'')

[18] Spiegel Institut Manheim is a German research and consulting firm. See *https://www.spiegel-institut.de/en/about-us/who-we-are*.

[19] A presentation by Audi and Spiegel Institut Mannheim describing this study and its results can be found in the docket for this petition. (''Attachment 5'')

[20] NHTSA notes that the qualitative observations discussed in the petition were preliminary observations made by NHTSA researchers during an 8-week lease of a CMS-equipped Audi A4, and do not represent an official agency position on CMS generally or Audi's proprietary CMS technology. NHTSA published a report of its findings, which include both positive and negative observations, in October 2018 (DOT HS 812 582).

[21] We note that the performance specifications of these features are not included in the petition.

5. Are there data on the likelihood that some drivers may find that they are unable to use the CMS, but will not know this at the time of sale? Should NHTSA require that exempted vehicles include a warning label to inform potential customers of this possibility?

6. The field of view defined by S5.2.1 of FMVSS No. 111 for driver's side outside mirrors differs from the field of view defined by ECE R46 for Class III mirrors (Class III is the mirror class for which Audi's CMS has received type approval according to the documents submitted with the petition).[22] In view of these differences, what weight should NHTSA give Audi's statement that the CMS complies with R46? Relatedly, what are the testing situations unique to the US market to which the petition refers?

7. How and to what extent should NHTSA consider in its safety analysis the inclusion of safety features that provide the driver with non-visual information about the driving environment (*e.g.,* blind spot detection)?

8. How should NHTSA consider the incomplete VTTI study cited in the petition, especially given that the study has not yet produced results?

9. To inform possible future rulemaking activities in this area to permit CMS on all vehicles in place of mirrors, if NHTSA were to grant Audi an exemption, should the agency condition the exemption on submitting reports on the on-road experiences of Audi's vehicles? If so, what information should Audi be required to report?

IV. Comment Period

The agency has not made any judgment on the merits of the petition, and is placing a copy of the petition and supporting information in the docket.

The agency seeks comment from the public on the merits of Audi's petition for a temporary exemption from paragraphs FMVSS No. 111, ''Rear Visibility''. We are providing a 30-day comment period. After considering the petition, the public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

[22] FMVSS 111, S5.2 .1 states that passenger car mirrors must provide a view of the road that is 2.4 meters wide when measured 10.7 meters behind the mirror. ECE R46, 15.2.4.3 states that a Class III mirror must provide a view of the road that is 4 meters wide when measured 20 meters back from the mirror, and 1 meter wide when measured 4 meters back from the mirror. Overall, these differences mean that the required field of view for the driver's side mirror under FMVSS 111 is narrower than the required field of view for a driver's side Class III mirror under ECE R46 when measured close to the mirror, but wider than ECE R46 when measured further back from the mirror.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.4.

James Clayton Owens,

Acting Administrator.

[FR Doc. 2019–22769 Filed 10–17–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974; System of Records

AGENCY: Office of the Comptroller of the Currency (OCC), Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Office of the Comptroller of the Currency, proposes to modify a system of records titled, ''Department of the Treasury, Office of the Comptroller .220—Notices of Proposed Changes in Employees, Officers and Directors Tracking System—Treasury/Comptroller.'' This electronic system, is used to maintain the applications, background materials, and tracking information related to applications submitted by OCC-regulated entities for approval of employees, proposed directors or senior executive officers of a national bank, federal savings association, or federal branches of foreign banks; and requests from foreign banking supervisors for information about a former or existing employee of an OCC-regulated institution. Records in this system may be contained in an electronic system used by the OCC's Large Bank Supervision examiners or in an electronic system used by the OCC's Midsize and Community Bank supervision examiners, depending on the bank to which the records pertain. Additional copies of information may be contained in paper working files.

DATES: Submit comments on or before November 18, 2019. The new routine use will be applicable on November 18, 2019 unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Privacy Act'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''Regulations.gov'': Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0026'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.

- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0026'' in your comment. The OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

Viewing Comments Electronically: Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0026'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.

- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the

close of the comment period in the same manner as during the comment period.

Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: For general questions please contact Kristin Merritt, Special Counsel, Administrative and Internal Law Division, (202) 649–5585; for persons who are deaf or hard of hearing, TTY, (202) 649–5597; Stephen Warren, Chief Information Officer, (202) 649–6001; or Ronald Sheldon, Senior Program Analyst (Privacy), Privacy Program Office, (202) 649–5780, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, 5 U.S.C. 552a, the Department of the Treasury (''Treasury''), Office of the Comptroller of the Currency proposes to modify a current Treasury system of records titled, ''Department of the Treasury, CC .220—Notices of Proposed Changes in Employees, Officers and Directors Tracking System—Treasury/Comptroller.'' This notice amends the existing SORN to (1) change the name of the SORN to more accurately describe the system; (2) expand the category of individuals in the system beyond those submitting a notice pursuant to 12 CFR 5.51 to include those for whom background information has been requested by another federal financial institution supervisor or a foreign supervisor; (3) remove from the category of individuals in the system those submitting a notice pursuant to 12 CFR 5.20(g)(2); (4) expand the categories of records to include additional background checks conducted beyond those undertaken pursuant to notices filed under 12 CFR 5.51; (5) expand the categories of records of records, to include information beyond basic tracking information associated with notices submitted under section 5.51 to include notice materials (including interagency biographical and financial reports submitted in connection with those applications) and background check result information; (6) remove from the categories of records information submitted pursuant to notices filed under 12 CFR 5.20(g)(2); and (7) add one routine use to all of the systems of records to share information with other federal agencies or federal entities as required by OMB Memorandum 17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' dated January 3, 2017, to assist Treasury/Fiscal Service in responding to a suspected or confirmed breach or prevent, minimize, or remedy the risk of harm to the requesters, Treasury/Office of the Comptroller of the Currency, the Federal Government, or national security.

Dated: May 24, 2019.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency and Records.

Editorial note: This document was received for publication by the Office of the Federal Register on October 9, 2019.

SYSTEM NAME AND NUMBER:

Department of the Treasury, Office of the Comptroller of the Currency (OCC) Treasury/OCC .220. Processing, Tracking and Recordkeeping System: 914 and other Background Checks.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Supervision Information division, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 8E–206, Washington, DC 20219–0001; Large Bank Supervisory Information, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 8W–412, Washington, DC 20219–0001.

SYSTEM MANAGER(S):

Director for Supervisory Information, (202) 649–6693, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 8E–206, Washington, DC 20219–0001; Supervisory National Bank Examiner, Large Bank Supervisory Information, (202) 649–5002, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 8W–412, Washington, DC 20219–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1 (as amended), 27, 93a, 481, 1464, 1818, 1820, 1831i, and 5412(b)(2)(b).

PURPOSE(S) OF THE SYSTEM:

The OCC uses information maintained in this system to carry out its statutory and other regulatory responsibilities, including reviews of the qualifications and fitness of individuals who propose to become responsible for the business operations of OCC-regulated entities; assisting other federal financial institution supervisors in such reviews; and responding to requests from foreign supervisors requiring information in order to carry out their statutory and other regulatory responsibilities.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals covered by this system are those who are named in notices filed: (1) Under 12 CFR 5.51 as proposed directors or senior executive officers of a national bank, Federal savings association, or federal branches of foreign banks (Section 5.51-regulated entities) when the entities:

(a) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(b) Are subject to cease and desist orders, consent orders, or formal written agreements, unless otherwise informed in writing by the OCC;

(c) Have been determined, in writing, by the OCC to be in ''troubled condition'';

(d) Are not in compliance with minimum capital requirements prescribed under 12 CFR part 3; or

(e) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan, that such filings are appropriate;

(2) those named in notices submitted in accordance with the requirements of an order, condition imposed in writing, or other written agreement pursuant to 12 U.S.C. 1818(b);

(3) those named in notices filed pursuant to similar authorities with other federal financial institution supervisors and who are the subject of requests for background information made to the OCC by the other supervisors; and

(4) those named in requests for background information submitted to the OCC by foreign supervisors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this Privacy Act system may contain: The names, charter numbers, and locations of the OCC-regulated institutions that have submitted notices; the names, addresses, dates of birth, social security numbers, fingerprints, financial statements, tax information, criminal background check information, and other biographical information of individuals proposed as either directors or senior executive officers; and the actions taken by the OCC in connection with these notices.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from OCC-regulated entities; individuals named in notices filed

pursuant to 5 CFR 5.51or in accordance with the requirements of an order, condition imposed in writing, or other written agreement pursuant to 12 U.S.C. 1818(b); federal or state financial regulatory agencies; foreign regulators; criminal law enforcement authorities; and credit bureaus.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information maintained in this system may be disclosed to:

(1) A Section 5.51-regulated entity or an entity in connection with review and action on a notice filed by such entity;

(2) Third parties to the extent necessary to obtain information that is pertinent to the OCC's review and action on a notice received under any authority cited herein;

(3) Appropriate governmental or self-regulatory organizations when the OCC determines that the records are relevant and necessary to the governmental or self-regulatory organization's regulation or supervision of financial service providers, including the review of the qualifications and fitness of individuals who are or propose to become responsible for the business operations of such financial service providers;

(4) An appropriate governmental, tribal, self-regulatory, or professional organization if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(5) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the OCC determines that the information is relevant and necessary to a proceeding in which the OCC, any OCC employee in his or her official capacity, any OCC employee in his or her individual capacity represented by the Department of Justice or the OCC, or the United States is a party or has an interest;

(6) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained;

(7) A contractor or agent who needs to have access to this system of records to perform an assigned activity;

(8) Third parties when mandated or authorized by statute; or

(9) To appropriate agencies, entities, and persons when (a) the Department of the Treasury and/or the OCC suspects or has confirmed that there has been a breach of the system of records; (b) the Department of the Treasury and/or the OCC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or the OCC (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or the OCC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(10) To another Federal agency or Federal entity, when the Department of the Treasury and/or OCC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained in this system are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records maintained in this system may be retrieved by the name or other personal identifier of an individual covered by the system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the OCC Comprehensive Record Retention Schedule, Section 2.3A with a 30-year disposition; OCC's records management policies; and National Archives and Records Administration regulations.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to this system is restricted to authorized personnel who have a bona fide business reason to access the information contained in the system and have been issued non-transferrable access codes and passwords.

RECORD ACCESS PROCEDURES:

An individual wishing to obtain access to non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, (202) 649–6758, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 3E–218, Washington, DC 20219–0001. An individual seeking access through mail must establish his or her identity by providing a signature and an address as well as one other identifier bearing the individual's name and signature (such as a photocopy of a driver's license or other official document). An individual seeking access in person must establish his or her identity by providing proof in the form of a single official document bearing a photograph (such as a passport or identification badge) or two items of identification that bear both a name and signature. Alternatively, identity may be established by providing a notarized statement, swearing or affirming to an individual's identity, and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining information under false pretenses. Additional documentation establishing identity or qualification for notification may be required, such as in an instance where a legal guardian or representative seeks notification on behalf of another individual. See 31 CFR part 1, subpart C, Appendix J.

CONTESTING RECORDS PROCEDURES:

An individual wishing to be notified about how he or she can contest the content of any record pertaining to him or her in this system should request notification in writing to the Freedom of Information Act Officer, Communications Division, (202) 649–6758, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 3E–218, Washington, DC 20219–0001. Such a request will be subject to the same identification requirements as above in ''Record Access Procedures.'' See 31 CFR part 1, subpart C, Appendix J.

NOTIFICATION PROCEDURES:

An individual wishing to be notified if he or she is named in non-exempt records maintained in this system must submit a written request to the Freedom of Information Act Officer, Communications Division, (202) 649–6758, Office of the Comptroller of the Currency, 400 Seventh Street SW, Room 3E–218, Washington, DC 20219–0001. Such a request will be subject to the same identification requirements as above in ''Record Access Procedures.'' See 31 CFR part 1, subpart C, Appendix J.

EXEMPTIONS PROMULGATED FOR THIS SYSTEM:

The Secretary of the Department of the Treasury has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant

to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

HISTORY:

This system of records notice was last published on January 19, 2016, at 81 FR 2945.

[FR Doc. 2019–22408 Filed 10–17–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Agency Information Collection Activity: Statement of Purchaser or Owner Assuming Seller's Loan

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 17, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0111'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA, invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: Statement of Purchaser or Owner Assuming Seller's Loan, VA form 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Extension of a currently approved collection.

Abstract: Under Title 38, U.S.C., section 3702, authorizes collection of this information to help determine the release of liability and substitution of entitlement. 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.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–22750 Filed 10–17–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 202 October 18, 2019

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change Related To Adopt Rules To Govern the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87287; File No. SR–BOX–2019–19]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change Related To Adopt Rules To Govern the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

October 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 September 27, 2019, BOX Exchange LLC (the ''Exchange'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (''Exchange Act''),[3] BOX Exchange LLC (''BOX or the ''Exchange'') is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (''BSTX''). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of ''security tokens,'' which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger (or ''blockchain'') technology. The proposed additions to the Exchange's Rules setting forth new Rule Series 17000–28000 are included as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange's rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, are included as Exhibits 3A through 3N.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM–8050–3, 11010, 11030, 12030, and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange's Rules.[4]

II. The Exchange'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 these statements.

(A) The Exchange's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to adopt a series of rules to govern the trading of equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system (''BSTX System'') for the trading of ''security tokens,'' which would be equity securities that meet BSTX listing standards and for which ancillary records of ownership would be able to be created and maintained using distributed ledger technology. These ancillary records of ownership that would be maintained using distributed ledger technology would not be official records of security token ownership. Instead, as described further herein, such records would be ancillary records that would reflect certain end-of-day security token position balances as reported by market participants. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies that wish to issue their registered securities as security tokens. Security tokens would trade as NMS stock.[5] A guide to the structure of the proposed rule change is described immediately below.

I. Guide to the Scope of the Proposed Rule Change

The proposal for trading of security tokens through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (''BSTX Rules''). In addition, BSTX corporate governance documents as well as certain discrete changes to existing BOX corporate governance documents are necessary, which the Exchange plans to submit to the Commission through a separate proposed rule change. To support the trading of security tokens through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 28000.[6] Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a discussion of notable differences between the source rule and the proposed BSTX Rule. The proposed BSTX Rules are addressed in Section IV below and they generally cover the following areas:

- Section 17000—General Provisions of BSTX;
- Section 18000—Participation on BSTX;
- Section 19000—Business Conduct for BSTX Participants;
- Section 20000—Financial and Operational Rules for BSTX Participants;
- Section 21000—Supervision;
- Section 22000—Miscellaneous Provisions;
- Section 23000—Trading Practice Rules;
- Section 24000—Discipline and Summary Suspension;
- Section 25000—Trading Rules;
- Section 25200—Market Making on BSTX;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C.k 78s(b)(1).

[4] The Exchange's Rules can be found on the Exchange's public website: *https://boxoptions.com/regulatory/rulebook-filings/*.

[5] 17 CFR 242.600(b)(48).

[6] The proposed changes to BOX Rules and the proposed BSTX Rules are attached as Exhibit 5A.

- Section 26000—BSTX Listing Rules;
- Section 27000—Suspension and Delisting;
- Section 27100—Guide to Filing Requirements;
- Section 27200—Procedures for Review of Exchange Listing Determinations; and
- Section 28000—Dues, Fees, Assessments and Other Charges.

II. Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Security Tokens

A. The Joint Venture and Ownership of BSTX

On June 19, 2018, t0.com Inc. (''tZERO'') and BOX Digital Markets LLC (''BOX Digital'') announced a joint venture to facilitate the trading of security tokens on the Exchange.[7] As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture and accompanying changes to the Exchange's current governance documents and bylaws, will be the subject of a separate proposed rule change that the Exchange plans to submit to the Commission.

B. BSTX Is a Facility of BOX That Would Support Trading in the New Asset Class of Security Tokens

BSTX would operate as a facility[8] of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX's operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations.[9] Currently, BOX functions as an exchange only for standardized options. While BSTX may eventually support a wider variety of securities, subject to Commission approval, at the time that BSTX commences operations it would only support trading in security tokens that are equity securities. Accordingly, this represents a new asset class for BOX, and this proposal sets forth the changes and additions to the Exchange's rules to support the trading of equity securities as security tokens.

The Exchange proposes to use the term ''security token''[10] to describe the BSTX-listed securities that would use blockchain technology as an ancillary recordkeeping mechanism, as described in further detail below. Ownership of security tokens would be able to be transferred without regard to the blockchain-based ancillary recordkeeping functionality (as also described further below). Notwithstanding this, the Exchange believes that it is appropriate to describe these securities as ''security tokens'' to distinguish them from other securities that are not designed to use blockchain technology as an ancillary recordkeeping mechanism and as a way of indicating the additional proposed obligations of market participants trading security tokens to obtain a wallet address and report end-of-day security token balances to BSTX.[11]

C. Security Tokens Would Be NMS Stocks

The security tokens would qualify as NMS stocks pursuant to Regulation NMS,[12] which defines the term ''NMS security'' in relevant part to mean ''any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan . . . .''[13] The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of security token quotation and transaction reporting.[14] The term ''NMS stock'' means ''any NMS security other than an option''[15] and therefore security tokens traded on BSTX that represent equity securities will be classified as NMS stock.

D. BSTX Would Support Trading of Registered Securities

All security tokens traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act[16] and Section 6 of the Securities Act of 1933 (''Securities Act'').[17] BSTX would not support trading of security tokens offered under an exemption from registration for public offerings, with the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

E. Clearance and Settlement of Security Tokens

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with security tokens. All transactions in security tokens would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time that it commences operations security tokens that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (''DTC'') and that DTC would serve as the securities depository[18] for such security tokens. It is also expected that confirmed trades in security tokens on BSTX would be transmitted to National Securities Clearing Corporation (''NSCC'') for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange traded equity securities.

1. Issuance of Equity Securities Eligible To Become a Security Token

BSTX expects that a security issuer's process for issuing a class of security that may be eligible for listing on BSTX

[7] *See* tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), *available at https://www.businesswire.com/news/home/20180619005897/en/tZERO-BOX-Digital-Markets-Sign-Deal-Create.*

[8] 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that ''the term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' Because BSTX will share certain systems of the Exchange, BSTX is a facility of the Exchange.

[9] 15 U.S.C. 78f; 15 U.S.C. 78s.

[10] The Exchange proposes to define the term ''security token'' to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. References to a ''security'' or ''securities'' in the Rules include security tokens. *See* proposed Rule 17000(a)(30).

[11] *See* Part II, Sections G and I for further description of these obligations.

[12] 17 CFR 242.600 through 613.

[13] 17 CFR 242.600(b)(47).

[14] 17 CFR 242.601(a)(1). The rule states in relevant part that ''every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities . . . .''

[15] 17 CFR 242.600(b)(47).

[16] 15 U.S.C. 78l.

[17] 15 U.S.C. 77f.

[18] 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to include ''any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.''

as a security token would follow the same general process for issuing securities that BSTX believes is followed by issuers in the U.S. today. That is, issuers would issue securities pursuant to governing state law and the organizational documents for the entity. At the commencement of BSTX's operations, only equity securities would be eligible for listing as security tokens. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Security Tokens) and 26105 (Warrant Security Tokens), which would be part of BSTX's listing rules and would contemplate that only those specified types of equity securities would be eligible for listing.

2. Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which security tokens would be held in ''street name'' with DTC.[19] BSTX Rule 26136 would require that for an equity security to be eligible to be a security token BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.[20] In practice, BSTX Rule 26136 requires the security token to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.[21]

3. Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26137 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.[22] Proposed BSTX Rule 26137 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (''FINRA'').[23] Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings and ''thereby reduce settlement risk'' in the U.S. national market system.[24]

4. Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (''CNS'') system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) A requirement that each security token transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a security token transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a security token transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor's Exchange, LLC (''IEX''), which, in turn, is consistent with the rules of other equities exchanges.[25]

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which security tokens that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry. The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX's operations, security tokens would be securities that have been made eligible for services by DTC, including book-entry settlement services.

5. Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in security tokens. Security token trades that result from orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. Additionally, Rule 25100(d) would provide that such security token transactions occurring through BSTX would settle one business day after the trade date (*i.e.,* T+1) where that settlement cycle timing is permitted under the rules, policies and procedures of the relevant registered clearing agency. This creates a presumption of T+1 settlement for security token trades in such circumstances. However, the BSTX participants that are parties to a security token trade would have the ability to agree to a shorter or longer settlement cycle for the trade as may be permitted by the relevant registered clearing agency. The BSTX participants would also be required to notify BSTX of the shorter or longer settlement cycle timing in a manner consistent with related procedures that BSTX would maintain from time to time.

As noted above in connection with the description of proposed BSTX Rule 25140, BSTX expects at the commencement of its operations that it

[19] The term ''street name'' refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26135 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

[20] Proposed BSTX Rule 26136 is based on current NYSE Rule 777.

[21] *See* Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

[22] FINRA is currently the only national securities association registered with the SEC.

[23] *See e.g.,* FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

[24] These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. *See* Securities Exchange Act Release Nos. 35774 (May 26, 1995) (SR–NASD–95–24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR–NYSE–95–19).

[25] *See* IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX's application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); *see also* Cboe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

would transmit confirmed trade details to NSCC regarding security token trades that occur on BSTX and that NSCC would be the registered clearing agency that clears security token trades. BESTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.[26] As described above regarding BSTX Rules 26136 and 26137, all security token trades occurring on BSTX that are cleared by NSCC, including those for which the T+1 settlement presumption would apply, would be settled through book-entry settlement at DTC pursuant to its rules, policies and procedures.

In adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central counterparty[27] (''CCP'') services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting ''reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP's risk management process . . . '' and that ''[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.''[28] The Commission went on to state its belief that shortening the settlement cycle ''would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors'' such as ''quicker access to funds and securities following trade execution'' and ''reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]''[29] The Commission also ''noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]''[30] BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of a T+1 settlement cycle regarding security token trades where T+1 settlement is already permitted pursuant to the rules, policies and procedures of NSCC and DTC today.

F. Compatibility With the BSTX Security Token Protocol for BSTX-Listed Security Tokens To Facilitate Ancillary Recordkeeping

BSTX would maintain listing standards that would enable security tokens to have an ancillary record of ownership recorded on the Ethereum blockchain using a protocol standard determined by BSTX (the ''BSTX Security Token Protocol'' or the ''Protocol'').[31] In this way, the Ethereum blockchain would serve as a complementary recordkeeping mechanism to official records of security token ownership maintained by market participants.

1. Background on Blockchain Technology

In general, a blockchain is an open, decentralized ledger that can maintain digital records of assets and transactions that are accessible to anyone running the same protocol.[32] The blockchain's central function is to encode transitions or changes to the ledger, such as the movement of an asset from one person to another person. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition. The purpose of requiring security tokens to adopt the BSTX Security Token Protocol is to enable security token ownership to be recorded on the public Ethereum blockchain as an ancillary recordkeeping mechanism and to ensure uniformity among security tokens rather than permitting each security token to have its own unique specifications that might complicate updates to the blockchain and add unnecessary complexity.

2. Background on the Ethereum Blockchain

The Ethereum blockchain is an open-source, public blockchain that operates as a computing platform and operating system that supports smart contract functionality.[33] Smart contracts are computer protocols designed to digitally facilitate, verify, and enforce the performance of a contract. Ethereum-based smart contracts are executed on the Ethereum Virtual Machine, which can be thought of as a global computer network upon which the smart contracts run. Ether is the digital currency used to pay fees associated with operating smart contracts (known as ''gas'') on the Ethereum networks. This is because there are costs involved in performing the computations necessary to execute a smart contract and to record any state transitions onto the Ethereum blockchain.[34] Thus, moving tokens from one address to another address (*i.e.,* a state transition) requires some amount of Ether to pay the fee (*i.e.,* ''gas'') associated with recording the movement of tokens to the Ethereum blockchain. Parties to a transaction in Ethereum-based smart contracts can determine what those gas costs are depending on how quickly they would like the transaction to be reflected on the Ethereum blockchain.

3. Background on Smart Contracts

The term ''smart contract'' is commonly used to describe computer-coded functions in connection with the Ethereum blockchain. An Ethereum smart contract is neither ''smart'' nor a legal contract in the traditional sense. Smart contracts in this context refer to immutable[35] computer programs that run deterministically[36] in the context of the Ethereum Virtual Machine. Smart contracts operate within a very limited

[26] 17 CFR 240.15c6–1. Under SEC Rule 15c6–1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

[27] *See* 17 CFR 240.17Ad–22(a)(2) (defining the term ''central counterparty'' to mean ''a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer'').

[28] Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570–71 (March 29, 2017).

[29] *Id.* at 15571.

[30] *Id.* at 15582.

[31] While BSTX initially intends to support only the trading of eligible security tokens that are compatible with the Ethereum public blockchain, BSTX may support tokens compatible with other blockchains that support smart contract functionality in the future.

[32] A ''protocol'' for this purpose is a set of rules governing the format of messages that are exchanged between the participants.

[33] *See* Ethereum White Paper (last updated Aug. 1, 2018) *available at https://github.com/ethereum/wiki/wiki/White-Paper.*

[34] *See What Is Gas,* MyEtherWallet (2018) *available at https://kb.myetherwallet.com/posts/transactions/what-is-gas/.*

[35] Smart contracts are immutable in that, once deployed, the code of a smart contract cannot change. Unlike with traditional software, the only way to modify a smart contract is to deploy a new instance.

[36] Deterministic in this context means that the outcome of the execution of a smart contract is the same for everyone who runs it, given the context of the transaction that initiated its execution.

execution context. They can access their own state, the context of the transaction that called them, and some information about the most recent blocks (*i.e.,* the most recent recording of transactions and other events recorded to the Ethereum blockchain).

In the context of security tokens, smart contracts generally may have three components: (i) Functions, (ii) configurations; (iii) and events.[37] Functions describe the basic operations of a smart contract, such as the ability to query a particular address to determine how many tokens belong to that address.[38] Configurations are attributes of a smart contract that are typically set at the launch of a smart contract, such as designating the name of the smart contract (*e.g.,* as XYZ security token). Events describe the functions of a smart contract that, when executed, result in a log or record being recorded to the Ethereum blockchain, such as the transfer of tokens from one address to another. Not all functions of a smart contract result in a log or record being recorded to the Ethereum blockchain. Smart contracts only run if they are called by a transaction.[39]

Smart contracts can call another smart contract, which can call another contract, and so on. Smart contracts never run ''on their own'' or ''in the background,'' but rather lie dormant until a transaction triggers them to carry out a specified operation pursuant to the protocol on which they operate. All transactions execute in their entirety or not at all, regardless of how many smart contracts they call or what those smart contracts do. Only if a transaction successfully executes in its entirety is there an ''event'' representing a change to the state of the blockchain with respect that transaction. If an execution of a smart contract's operation fails due to an error, all of its effects (*e.g.,* events) are rolled back as if the transaction never ran.

4. Background on Tokens

Tokens historically referred to privately issued, special-purpose coin-like items (*e.g.,* laundry tokens or arcade game tokens). In the context of blockchain technology, tokens generally mean blockchain-based abstractions that can be owned and that represent assets, currency, or access rights. A security token on the blockchain used for ancillary recordkeeping of ownership can be thought of as a digital representation of shareholder equity in a legal entity organized under the authority of state or federal law and that meet BSTX's listing standards. Having a security token attributed to a particular address, however, would not convey ownership of shareholder equity in the issuer because the official records of ownership would be maintained by participants at DTC.[40]

To create a new token on Ethereum, including for purposes of facilitating ancillary recordkeeping of security token ownership, one must create a new smart contract. The smart contract would be configured to detail, among other things, the name of the issuer and the total supply of the tokens. Smart contracts can be designed to carry out any event that one wants, but using a set standard or protocol allows for participants transacting in those smart contracts to have uniform expectations and functionality with respect to the tokens.

5. Background on Protocols

A protocol (also sometimes referred to as a ''standard'' or ''protocol standard'') defines the functions, events, configurations, and other features of a given smart contract. The most common protocol used with Ethereum is the ERC–20 protocol, which describes the minimum functions that are necessary to be considered an ERC–20 token.[41] The ERC–20 protocol offers basic functionalities to transfer tokens, obtain account balances, and query the total supply of tokens, among other features. The BSTX Security Token Protocol is compliant with the ERC–20 protocol but adds additional requirements and functionality, as described below.

As noted above, Ether is the digital currency used to pay fees associated with operating smart contracts (known as ''gas'') on the Ethereum network. Payment of gas is required to operate smart contracts because there are costs involved in performing the computations necessary to execute a smart contract and to record any state transitions onto the Ethereum blockchain.

There is an important conceptual distinction between ERC–20 tokens, including security tokens, and Ether itself. Where Ether is transferred by a transaction that has a recipient address as its destination, token transfers occur within the specific token contract state and have the token smart contract as their destination, not the recipient's address. The token smart contract tracks balances and issues events to the Ethereum blockchain. In a token transfer,[42] no transaction is actually sent to the recipient of the token. Instead, the recipient's address is added to a map within the token smart contract itself. In contrast, a transaction sending Ether to an address changes the state of an address. A transaction transferring a token to an address only changes the state of the token contract, not the state of the recipient address. Thus, an address is not really full of tokens; rather it is the token smart contract that has the addresses and balances associated with each address in it.

6. BSTX Security Token Protocol

BSTX Rule 26138 requires that a BSTX listed company's security tokens must comply with the Protocol to trade on BSTX. The purpose of this requirement is to ensure that all security tokens are governed by the same set of specifications and controls that allow for ownership of security tokens to be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism.

The Protocol involves three smart contracts. The Asset Smart Contract is the primary smart contract that contains the balances of security tokens associated with each address and carries out the functions necessary to reflect changes in ownership. There are two ancillary smart contracts that are called by the Asset Smart Contract in executing transactions. The first of these is the Registry Smart Contract (''Registry''), which contains the list of permissioned (or ''whitelisted'') addresses, and the second is the Compliance Smart Contract, which includes a variable list of additional

[37] However, a smart contract need not necessarily have each of these components. Some smart contracts may simply be used to support the functioning of other smart contracts and may not itself result in events being recorded to the Ethereum blockchain.

[38] An ''address'' in this context refers to a number that is associated with a particular market participant within the smart contract that can updated to reflect changes in ownership of tokens.

[39] The term ''transaction'' in this context refer not to an actual execution or transaction occurring on BSTX or in the marketplace, but rather to an operation triggering a smart contract to carry out its specified function, which must ultimately originate from a human source.

[40] Rather, a digital representation of a security token associated with a particular address reflects an ancillary record of security token ownership based on data provided to BSTX by market participants. The records reflected on the Ethereum blockchain regarding security tokens may not be current to reflect the most recent transactions in the marketplace and may not reflect ownership by all market participants.

[41] *See e.g.,* Jesus Najera, Understanding ERC20, Coin Central (Jan. 8, 2018), *available at https://coincentral.com/understanding-erc20/*; Alfonso de la Rocha, *Anatomy of an ERC: An Exhaustive Survey,* Medium (May 7, 2018) *https://medium.com/coinmonks/anatomy-of-an-erc-an-exhaustive-survey-8bc1a323b541.*

[42] A ''transfer'' in the context of the BSTX Security Token Protocol regarding a security token refers to a reallocation of the digital representation of a security token on the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect corresponding changes in ownership of the security token.

compliance related rules that the Asset Smart Contract must comply with in executing a transaction. Each of these three smart contracts are described in greater detail below:

(1) *Asset Smart Contract*—The Asset Smart Contract defines and establishes the security tokens (*e.g.,* the maximum number of security tokens available for a particular issuance) for purposes of the Ethereum blockchain ancillary recordkeeping function and records a list of market participant addresses and the security tokens associated with each address.

(2) *Registry Smart Contract*—The Registry Smart Contract (or ''Registry'') defines the permissions available to different types of market participants to perform certain functions. Under the Protocol, there are five different types of market participants connected with the Registry, each with different abilities and permissions (as detailed below):[43] (1) Contract Owner, (2) Custodian, (3) Broker Dealer, (4) Custodial-Account, and (5) Investor. The Registry also contains the list of whitelisted addresses to which security tokens may be sent and additional information associated with each address (*e.g.,* whether an address has been suspended).

(3) *Compliance Smart Contract*—The Compliance Smart Contract is the set of rules held in a separate smart contract that a security token can be configured to abide by to ensure compliance with applicable laws and regulations (*e.g.,* by restricting a movement of security tokens to an address that has not been added to the Registry for purposes of the Ethereum blockchain ancillary recordkeeping mechanism). The Compliance Smart Contract can be modified to add or remove applicable rules in light of changes to applicable regulatory requirements.

Each of these three smart contracts work together to facilitate the ancillary recordkeeping mechanism for Security Tokens using the Ethereum blockchain. The details of the specific functions, configurations, and events under the Protocol are set forth in greater detail in Exhibit 3N.

G. Obtaining a Whitelisted Wallet Address

Pursuant to proposed Rule 17020(a), a BSTX Participant must, either directly or through its carrying firm, establish a wallet address to which its end-of-day security token balances may be recorded by either contacting BSTX or a Wallet Manager.[44] A BSTX Participant that is a carrying broker-dealer for other BSTX Participants would be assigned the wallet address with the status of a Custodian, which would allow that BSTX Participant to request wallet addresses on behalf of other BSTX Participants (for which it serves as the carrying broker-dealer) as either a Custodial Account or Broker-Dealer wallet address, as described above. A BSTX Participant that is not a carrying broker-dealer could request a Broker-Dealer wallet address, a Custodial Account wallet address in coordination with its carrying firm, and an Investor wallet address on behalf of a customer that would like its ownership of security tokens to be reflected at its own address for purposes of the Ethereum blockchain as an ancillary recordkeeping mechanism.[45]

Once a BSTX Participant has been assigned to a particular wallet address, the only further obligation of that BSTX Participant is to report its end-of-day security token balances to BSTX, as described below. The Exchange believes that the proposed requirement in Rule 17020(a) to obtain a wallet address is consistent with the Exchange Act and Section 6(b)(5)[46] in particular because it would help foster cooperation and coordination with persons engaged in regulating and facilitating transactions in security tokens by setting forth a process through which BSTX Participants may obtain a wallet address to which their end-of-day security token balances may be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange believes that the proposed requirement is similar to obtaining a market participant identifier (''MPID'') in that it establishes an identifier that can be attributed to a particular BSTX Participant for reporting purposes. The proposed requirement to obtain a wallet address is the same for all BSTX Participants, and is therefore not unfairly discriminatory, and the Exchange and Wallet Manager do not propose to charge a fee for obtaining a wallet address.

H. Coordination Between BSTX, Registered Clearing Agencies, and Wallet Managers

Upon the occurrence of a transaction on BSTX due to the completion of its order matching process,[47] BSTX would generate an execution report, and it would deliver drop copies to its own front-end systems to update the BSTX Participants and to NSCC.[48] Where a BSTX transaction creates a settlement obligation to transfer registered ownership of a security token, clearance and settlement would be performed in accordance with the rules, policies and procedures of a registered clearing agency as described in Section II.E. above. The Wallet Manager would be provided with information necessary to update the Ethereum blockchain through the end of day reporting mechanism discussed below.

I. Reporting End-of-Day Security Token Balances To Facilitate Ancillary Recordkeeping

To update the Ethereum blockchain to reflect ownership of security tokens as an ancillary recordkeeping mechanism, the Exchange proposes to require that each BSTX Participant, either directly or through its carrying firm, report each business day to BSTX certain end-of-day security token balances in a manner and form acceptable to BSTX.[49] A BSTX Participant that is a participant at DTC the total number of security tokens for each class of security token that are credited to each DTC account of the BSTX Participant.[50] For a BSTX Participant that is not a DTC participant, the BSTX Participant would be required to report the total number of security tokens for each class of security token that are credited to the BSTX Participant by its carrying firm.[51] Upon receipt of the end-of-day security token balances of each BSTX Participant, the Exchange would, in coordination with a Wallet Manager, cause the Ethereum

[43] There are additional roles that are not technically part of the Registry and are instead specific to certain smart contracts. For example, an ''Issuer'' is an Asset Smart Contract-specific role. Also, an ''Administrator'' is a Compliance Smart Contract-specific role that allows such a user to, for example, freeze the transfer of tokens for purposes of the ancillary recordkeeping function under certain circumstances and modify or add compliance rules to govern a security token.

[44] A ''Wallet Manager'' is defined as a party approved by BSTX to operate software compatible with the BSTX Protocol. *See* proposed Rule 17000(a)(31). A Wallet Manager would be a third-party service provider for the Exchange that will help facilitate establishing wallet addresses for BSTX Participants and other market participants and facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism regarding changes in ownership resulting from trading. Approved Wallet Managers that market participants may contact to obtain a wallet address will be listed on the Exchange's website.

[45] A BSTX Participant that is a carrying broker-dealer, and which therefore has a Custodial Account address, could also request Investor wallet addresses on behalf of customers.

[46] 15 U.S.C. 78f(b)(5).

[47] Order matching would occur through a price-time priority model, as discussed in greater detail below.

[48] The last sale transaction data would also be publicly disseminated pursuant to the transaction reporting plan, which would occur before delivery of drop copies to these parties.

[49] *See* Proposed Rule 17020(b).

[50] *See* Proposed Rule 17020(b)(1). As described above in Section II.E., BSTX would maintain rules that would promote a structure in which security tokens would be held in ''street name'' with DTC.

[51] *See* Proposed Rule 17020(b)(2).

blockchain to be updated as an ancillary recordkeeping mechanism to reflect changes in ownership of a security tokens.[52] The Exchange proposes that these end-of-day security token balance reports would be required each business day when DTC is also open for business, but after such time as DTC has completed its end-of-day settlement process.[53] The Exchange believes that once DTC has completed its end-of-day settlement process, DTC participants would be able to determine the number of security tokens credited to their DTC account(s) and to other market participants that settle through that DTC participant. Thereafter, BSTX Participants, or their carrying firms, would be able to obtain their security token balance information and report it to BSTX by the end of the day.

The Exchange would set forth via Regulatory Circular the precise manner in which security tokens should be reported. In general, the report would simply require certain identifying information regarding the BSTX Participant (*e.g.,* name, carrying firm, MPID) and a list of each security token trading on BSTX for which the BSTX Participant, or its carrying firm, would indicate the amount of security tokens held by the BSTX Participant at the end of a given trading day.

The Exchange believes that the proposed end-of-day security token balance reporting requirement is consistent with the Exchange Act, and Section 6(b)(5) [54] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens and would not unfairly discriminate among BSTX Participants, all of whom are subject to the same reporting requirement. This reporting obligation would be used to update the Ethereum blockchain as an ancillary recordkeeping mechanism. Without this information, the Exchange would not be able to fully update the Ethereum blockchain, which would degrade the accuracy of the blockchain as an ancillary record of security token ownership. The Exchange notes that under the existing authority of other equity exchanges, the exchange is able to request that exchange members/participants furnish to the exchange records pertaining to transactions executed on or through the exchange in a time and manner required by such exchange.[55] Accordingly, BSTX believes that the proposed end-of-day security token balance reporting requirement would be consistent with authority that the Commission has already approved regarding furnishment of records by members of exchanges.

J. Pilot Program

To facilitate the integrity of the Ethereum blockchain as an ancillary recordkeeping mechanism that reflects ownership of security tokens, the Exchange would also needs to account for changes in ownership that result from transactions away from BSTX. To obtain sufficient information regarding security token ownership to be able to update the blockchain for security token transactions that occur away from BSTX, the Exchange proposes in Rule 17020(d) that, for a time-limited period of one year from the commencement of trading in security tokens on BSTX, trades occurring otherwise than on a national securities exchange may only occur among market participants who obtain a wallet address from the Exchange in a manner consistent with proposed Rule 17020(a) and agree to report their end-of-day security token balances to BSTX in a manner consistent with proposed Rule 17020(b) and (c) (the ''Pilot''). During the duration of the Pilot, the Exchange would work with FINRA on adoption of a rule(s) by FINRA that would require FINRA members to obtain a wallet address and for end-of-day security token balance reports to be reported in a manner that would facilitate updates to the Ethereum blockchain to reflect ancillary records of security token ownership.

The Exchange believes that FINRA, as the only national securities association that regulates SEC registered broker-dealers, is best positioned to implement a rule that would require end-of-day reporting of security token balances. However, until such time as FINRA adopts such a rule and in the absence of an Exchange requirement, the Exchange would only be able to ensure its ability to fully update the Ethereum blockchain as an ancillary recordkeeping mechanism by restricting over-the-counter (''OTC'') trading. The Exchange is not proposing to limit the ability of market participants to trade security tokens OTC,[56] and therefore the Exchange is instead proposing BSTX Rule 17020(d) on a pilot basis to establish a temporary mechanism that would facilitate more comprehensive updates to the Ethereum blockchain as an ancillary recordkeeping mechanism.[57]

The Exchange believes that the one-time requirement to acquire a wallet address from the Exchange and the on-going reporting obligation regarding a market participant's end-of-day security token balance to BSTX would impose a relatively minimal burden on market participants trading security tokens OTC. Currently, transactions in NMS

[52] Notably, because the Ethereum blockchain is updated each day using the end-of-day security token balance reports, and is, in any case, only functioning at this time as an ancillary recordkeeping function, concerns regarding a loss of private keys or disruption to the Ethereum blockchain are fully mitigated. For example, assume a BSTX Participant owns 100 security tokens of XYZ at the end of Day 1 and, as a result of trading on Day 2, ends DAY 2 with a balance of 200 security tokens of XYZ. If the BSTX Participant's wallet address were somehow compromised during the trading day on Day 2 and the 100 security tokens were moved to another address (which could only be moved to another whitelisted address), this would not substantively impact the functioning of the blockchain as an ancillary recordkeeping tool. At the end of trading on Day 2, the BSTX Participant would report its ownership of 200 security tokens of XYZ to BSTX, which would then update the Ethereum blockchain to reflect this end of day balance.

[53] *See* Proposed Rule 17020(c).

[54] 15 U.S.C. 78f(b)(5).

[55] *See e.g.,* BOX Rule 10000(a) and (b), Cboe BZX Rule 4.2, and IEX Rule 4.540. Broker-dealers are also subject to daily or real-time reporting obligations in a variety of other contexts. For example, pursuant to the FINRA Rule 7000 Series. *See e.g.,* FINRA Rule 7230A(b) (noting that ''Participants shall transmit trade reports to the System for transactions in Reportable Securities as soon as practicable but no later than 10 seconds after execution . . .). Trades in municipal securities are generally required within 15 minutes of the time of trade. *See* MSRB Rule G–14(a)(ii).

[56] Discussion of trading security tokens on other exchanges is described in Part II.K below.

[57] The Exchange acknowledges that it is possible that there may be OTC trades that occur between two non-FINRA members, as currently occurs today, which could result in a reporting gap with respect to security tokens. *See* Exchange Act Release No. 74581, 80 FR 18036, 18043 (April 2, 2015) (noting that non-FINRA member firms ''that engage in off-exchange transactions are not required to submit audit trail data to FINRA.''). In an OTC trade between two non-FINRA members, it is possible that even in the presence of a FINRA rule requiring its members to obtain a wallet address and report their end of day balances in a manner to facilitate updates to the Ethereum blockchain, there could still be reporting gaps in the end-of-day security token balance information for OTC trades between two non-FINRA members (*e.g.,* if the non-FINRA members were not otherwise subject to an end-of-day security token balance reporting rule on exchanges of which they are a member and declined to voluntarily report such information). The Exchange notes that non-FINRA member broker-dealers would remain subject to the rules of each exchange of which they are a member. To the extent the rules of these exchanges (*i.e.,* the exchanges of which the non-FINRA member is a member) require their members to obtain a wallet address and report their end of day security token positions, as discussed further below in Part II, Section K, the end-of-day security token position reporting data would be required to be reported. If these exchanges did not have such rules in place (*e.g.,* if they did not extend unlisted trading privileges to security tokens and adopt rules requiring members to obtain a wallet address and report end-of-day security token balances), there would be no requirement obligating the non-FINRA member to report its end-of-day security token balance information.

stocks occurring OTC must be reported on a trade-by-trade basis to the one of three trade reporting facilities (''TRF'')—the FINRA/Nasdaq TRF Carteret, FINRA/Nasdaq TRF Chicago, or the FINRA/NYSE TRF.[58] The TRFs are facilities of FINRA but operated by Nasdaq and NYSE respectively, and in order to use the services of the TRFs, participants must enter into an agreement with the exchanges.[59] As a result, even where a firm is not a member of Nasdaq or NYSE, in order to report OTC trades in NMS stocks to the TRFs, one must enter into an agreement with the exchanges.

Reporting end-of-day security token balances to BSTX would operate in a similar fashion whereby a non-BSTX Participant interested in trading security tokens OTC would be given a wallet address and would agree to report its end-of-day security token balances to the Exchange. This obligation would last only until the conclusion of the Pilot, and during the Pilot the Exchange would coordinate with FINRA to promote FINRA's adoption of a rule to codify the end-of-day security token balance reporting requirement.[60]

The Exchange believes that the proposed Pilot is consistent with the Exchange Act and Section 6(b)(5)[61] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens by ensuring that BSTX has sufficient information to be able to update the Ethereum blockchain to reflect ownership of security tokens as an ancillary recordkeeping mechanism and first step toward potential integration of blockchain technology to securities transactions. The Exchange believes that the proposed requirements of obtaining a wallet address from BSTX and providing end-of-day security token balance reports to the Exchange would impose a minimal burden and that these requirements would be similar to existing OTC reporting obligations of market participants, as described above. The Pilot would also be time limited to one year from the commencement of trading security tokens on BSTX, which the Exchange believes would provide sufficient time for the Exchange to coordinate with FINRA for FINRA to propose and adopt a rule that would provide BSTX with sufficient end-of-day security token balance information to update the Ethereum blockchain as an ancillary recordkeeping mechanism.

For the same reasons, the Exchange also believes that the Pilot is consistent with Exchange Act Rules 19c–1[62] and 19c–3,[63] which generally prohibit the rules, policies, or practices of a national securities exchange from prohibiting, conditioning or otherwise limiting, directly or indirectly, the ability of member from transacting in a security listed on the exchange (or a security to which unlisted trading privileges on the exchange have been granted) otherwise than on the exchange. During the Pilot, market participants would not be limited in their ability to trade security tokens otherwise than on BSTX because security tokens could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. During the limited duration of the Pilot, proposed BSTX Rule 17020(d) would only require market participants, including non-BSTX Participants, to obtain a wallet address and agree to report their end-of-day security token balances to BSTX. As noted above, BSTX's ability to enforce the terms of the Pilot on non-BSTX Participants is limited, but BSTX nonetheless wants to encourage market participants trading security tokens OTC to report their end-of-day security token balances to the Exchange in order to facilitate the use of the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange further notes that the Pilot would have a limited duration and that it intends to work with FINRA to provide for a similar requirement that would facilitate the collection of information necessary to update the Ethereum blockchain.

K. Trading Security Tokens on Other National Securities Exchanges

Security tokens would be eligible for trading on another national securities exchange that is able to support trading in security tokens. Pursuant to Rule 12f–5 under the Exchange Act,[64] an exchange may not extend unlisted trading privileges to any security unless the national securities exchange has in effect rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges. In the context of BSTX-listed security tokens, the additional rules that would be necessary for another exchange to extend unlisted trading privileges include: (i) Requiring that exchange members obtain a wallet address compatible with the BSTX Security Token Protocol in order to attribute security token balances with that exchange member; and (ii) adopting some mechanism to report end-of-day security token balances to BSTX in order to facilitate updates of ownership to the Ethereum blockchain as an ancillary recordkeeping mechanism. There are numerous ways in which another exchange could meet these requirements, such as by having the exchange establish a direct relationship with a Wallet Manager or similar entity through which the exchange might provide its members with wallet addresses and provide end-of-day security token balance reports. An exchange could alternatively coordinate with BSTX to facilitate these requirements. The Exchange views obtaining a wallet address and reporting of end-of-day security token balances as an important part of the blockchain-based ancillary recordkeeping process regarding security tokens.

The Exchange proposes to include certain rules that contemplate the trading of security tokens that may be listed on other national securities exchanges.[65] Since there are currently no other national securities exchanges trading security tokens, these rules would be implemented in anticipation of other exchanges eventually listing and trading their own security tokens. BSTX recognizes that another exchange trading security tokens, or the equivalent thereof, may require BSTX to adopt certain rules specific to such other exchange in order to extend unlisted trading privileges to the other exchange's security tokens consistent with Rule 12f–5.[66]

[58] OTC trades in NMS stocks may also be reported to FINRA's Alternative Display Facility (''ADF'') pursuant to the FINRA Rule 6200 series. However, nearly all trades are reported to the TRFs as the ADF presently has only three participants who may only use the ADF as a back-up reporting facility. *See* FINRA, Active ADF Participants, *available at https://www.finra.org/industry/adf/participants.*

[59] Participants in the FINRA/NYSE TRF must complete the Subscriber Service Agreement, which is submitted directly to NYSE. *See* FINRA/NYSE Trade Reporting Facility Subscriber Service Agreement at 1, *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/FINRA_NYSE_TRF_Subscriber_Service_Agreement.pdf.* Participants in the FINRA/Nasdaq TRF must, at a minimum, complete the Nasdaq U.S. Services Agreement. *See* FINRA/Nasdaq Trade Reporting Facility FAQ at 2, *available at https://www.nasdaqtrader.com/content/ProductsServices/Trading/TradeReporting/trf_faqs.pdf.*

[60] OTC trades in security tokens would also have to be reported to the TRFs or ADF consistent with FINRA's rules.

[61] 15 U.S.C. 78f(b)(5).

[62] 17 CFR 240.19c–1.

[63] 17 CFR 240.19c–3.

[64] 17 CFR 240.12f–5.

[65] *See e.g.,* proposed Rule 25040(e).

[66] 17 CFR 240.12f–5.

III. Proposed BSTX Rules

The discussion in this Section IV addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 28000.

A. General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of security tokens and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term ''customer.'' [67] The Exchange proposes to set forth new definitions for certain terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.[68] The Exchange also proposes to define certain unique terms relating to the trading of security tokens, including ''security token,'' [69] and ''Wallet Manager.'' [70] The term ''Wallet Manager'' is defined to provide context to the wallet address whitelisting and end-of-day security token balance reporting processes used to update the Ethereum blockchain as an ancillary recordkeeping mechanism.[71]

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 28000 Series apply to the trading, listing, and related matters pertaining to the trading of security tokens. Proposed Rule 17010(b) provides that, unless specific Rules relating to security tokens govern or unless the context otherwise requires, the provisions of any Exchange Rule (*i.e.,* including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.[72] This is intended to make clear that BSTX Participants are subject to all of the Exchange's Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading security tokens. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act [73] [sic] because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchanges Rules clearly and providing clarity as to the Exchange Rules that may apply, market participants could be confused as to the application of certain rules, which could cause harm to investors.

Proposed Rule 17020 sets forth the requirements to obtain a whitelisted wallet address from BSTX or a Wallet Manager, the end-of-day security token balance reporting, and the Pilot, which are discussed in greater detail above in Parts II.G through J.

B. Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes ''BSTX Participants'' as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement; [74] (ii) be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.[75] Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3–1 under the Exchange Act, comply with applicable books and records requirements, and be member of a registered clearing agency or clear security token transactions through another BSTX Participant that is a member/participant of a registered clearing agency.[76] Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent with Section 6(b)(5) of the Exchange Act [77] because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under Proposed Rule 18000, a BSTX Participant must first become an Exchange Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.[78]

C. Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct

[67] Proposed Rule 17000(a)(16) defines the term ''customer'' to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. *See e.g.,* IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term ''Regular Trading Hours'' as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* proposed Rule 17000(a)(28) *cf.* IEX Rule 1.160(gg) (defining ''Regular Market Hours'' in the same manner).

[68] For example, the Exchange proposes to define the term ''BSTX'' to mean the facility of the Exchange for executing transaction in security tokens, the term ''BSTX Participant'' to mean a Participant or Options Participant (as those terms are defined in the Exchange's Rule 100 Series) that is authorized to trade security tokens, and the term ''BSTX System'' to mean the automated trading system used by BSTX for the trading of security tokens. *See* proposed Rule 17000(a)(8), (11), and (14).

[69] Proposed Rule 17000(a)(30) provides that the term ''security token'' means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a ''security'' or ''securities'' in the Rules include security tokens.

[70] Proposed Rule 17000(a)(31) defines the term ''Wallet Manager'' as a party approved by BSTX to operate software compatible with the BSTX Protocol. *See also supra* Sections II.G and H. for a discussion of the role of a Wallet Manager.

[71] *See supra* note 42.

[72] Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of security tokens contained in Rule 17000 Series to Rule 28000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to security token trading shall control.

[74] The BSTX Participant Application, Participation Agreement, and User Agreement are attached as Exhibits 3A, 3B, and 3C respectively.

[75] Proposed Rule 18000 also sets forth the Exchange's review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (*e.g.,* in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM–2040–5, which specifies continuing education requirements of Exchange Participants and their associated persons.

[76] Proposed Rule 18010(b) is similar to the rules of existing exchanges. *See e.g.,* IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. *See e.g.,* IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

[77] 15 U.S.C. 78f(b)(5).

[78] The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. *See* Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.[79] The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable principles of trade;[80] (ii) adherence to law;[81] (iii) use of fraudulent devices;[82] (iv) false statements;[83] (v) know your customer;[84] (vi) fair dealing with customers;[85] (vii) suitability;[86] (viii) the prompt receipt and delivery of securities;[87] (ix) charges for services performed;[88] (x) use of information obtained in a fiduciary capacity;[89] (xi) publication of transactions and quotations;[90] (xii) offers at stated prices;[91] (xiii) payments involving publications that influence the market price of a security;[92] (xiv) customer confirmations;[93] (xv) disclosure of a control relationship with an issuer of security tokens;[94] (xvi) discretionary accounts;[95] (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts;[96] (xviii) the extent to which sharing in accounts is permissible;[97] (xix) communications with customers and the public;[98] (xx) gratuities;[99] (xxi) telemarketing;[100] and (xxii) mandatory systems testing.[101] The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain other provisions that would not apply to the trading of security tokens on the BSTX System.[102]

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act[103] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or their associated persons) from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.[104]

D. Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.[105] The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books

[79] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[80] Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

[81] Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

[82] Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

[83] Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

[84] Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

[85] Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (*e.g.,* churning or overtrading in relation to the objectives and financial situation of a customer).

[86] Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

[87] Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer's purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

[88] Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

[89] Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (*e.g.,* as a trustee).

[90] Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction or quotation information unless the BSTX Participant believes it to be bona fide.

[91] Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

[92] Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

[93] Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b-10 of the Exchange Act. 17 CFR 240.10b–10.

[94] Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

[95] Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

[96] Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

[97] Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

[98] Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

[99] Proposed Rule 19200 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

[100] Proposed Rule 19210 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

[101] Proposed Rule 19220 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

[102] For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (*e.g.,* higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. *See e.g.,* IEX Rule 3.290, Cboe BZX Rule 3.21.

[103] 15 U.S.C. 78f(b)(5).

[104] *See supra* n.79.

[105] *See* Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

and records;[106] (ii) financial reports;[107] (iii) net capital compliance;[108] (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act;[109] (v) authority of the Chief Regulatory Officer to impose certain restrictions;[110] (vi) margin;[111] (vii) day-trading margin;[112] (viii) customer account information;[113] (ix) maintaining records of customer complaints;[114] and (x) disclosure of financial condition.[115]

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act[116] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping, disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (''SRO'') by reference.

E. Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially similar to supervisory rules of other exchanges.[117] The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) Enforcing written procedures to appropriately supervise the BSTX Participant's conduct and compliance with applicable regulatory requirements;[118] (ii) designation of an individual to carry out written supervisory procedures;[119] (iii) maintenance and keeping of records carrying out the BSTX Participant's written supervisory procedures;[120] (iv) review of activities of each of a BSTX Participant's offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses;[121] (v) the prevention of the misuse of material non-public information;[122] and (vi) implementation of an anti-money laundering (''AML'') compliance program.[123] These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act[124] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participant have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant's business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.[125] In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.[126]

F. Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are

[106] Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

[107] Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

[108] Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

[109] 17 CFR 240.17a–11. Proposed Rule 20030 (''Early Warning'' Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a–11 under the Exchange Act (17 CFR 240.17a–11) or similar ''early warning'' requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements).

[110] Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange's Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances).

[111] Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer's margin account.

[112] Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

[113] Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

[114] Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

[115] Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant's financial condition upon request of a customer.

[116] 15 U.S.C. 78f(b)(5).

[117] *See* Cboe BZX Chapter 5 rules. *See also* IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

[118] Proposed Rule 21000 (Written Procedures).

[119] Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX's written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

[120] Proposed Rule 21020 (Records).

[121] Proposed Rule 21030 (Review of Activities).

[122] Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

[123] Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

[124] 15 U.S.C. 78f(b)(5).

[125] *Id.*

[126] *See supra* n.117.

substantially similar to rules of other exchanges.[127] These miscellaneous provisions relate to: (i) Comparison and settlement requirements;[128] (ii) failures to deliver and failures to receive;[129] (iii) forwarding of proxy and other issuer-related materials;[130] (iv) commissions;[131] (v) regulatory services agreements;[132] and (vi) transactions involving Exchange employees.[133] These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to incorporate by reference Rule 200–203 of Regulation SHO.[134]

The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act[135] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO[136] as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.[137] Similarly, Proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

G. Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), fourteen rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.[138] The proposed Rule 23000 series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.[139] Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.[140] Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participants from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.[141]

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other

[127] *See* Cboe BZX Chapter 13 rules. *See also* IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

[128] Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participants that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

[129] Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200—203 of Regulation SHO by reference into the rule (17 CFR §§ 242.200–203).

[130] Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

[131] Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

[132] Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

[133] Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant provide loans or supporting the account of an Exchange employee (*e.g.,* promptly obtaining and implementing an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

[134] 17 CFR §§ 242.200–203.

[135] 15 U.S.C. 78f(b)(5).

[136] 17 CFR 242.203.

[137] 15 U.S.C. 78f(e)(1).

[138] *See* Cboe BZX Chapter 12 rules.

[139] Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

[140] Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research report and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel from trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule 5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

[141] In addition proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

exchanges,[142] and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.[143] Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of $0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below $1, the Exchange proposes to adopt a uniform price improvement requirement of $0.01 for a securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of $0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges [144] except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is in an amount other than a round lot (*i.e.,* 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for security tokens pursuant to proposed Rule 25020 is one security token. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 security tokens (*i.e.,* trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act [145] because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of security tokens. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in security tokens and that are not necessary for the Exchange to carry out its functions of facilitating security token transactions and regulating BSTX Participants.

H. Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.[146]

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

I. Trading Rules and the BSTX System (Rule 25000 Series)

1. Rule 25000—Access to and Conduct on the BSTX Marketplace)

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restates provisions that are already set forth in Exchange Rule 7000, generally providing that BSX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act [147] because it is designed to protect investors and the public interest and promote just and

[142] *See e.g.,* Cboe BZX Rule 12.6.

[143] *See e.g.,* Cboe BZX Rule 12.6.07.

[144] *See e.g.,* Cboe BZX Rule 12.5.05.

[145] 15 U.S.C. 78f(b)(5).

[146] The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 25010 are discussed below in Part V.

[147] 15 U.S.C. 78f(b)(5).

equitable principles of trade by ensuring that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

2. Rule 25010—Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would be not be open (*e.g.,* New Year's Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person's designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any security tokens, close some or all of BSTX's facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[148] by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

3. Rule 25020—Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one security token. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act[149] because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of security tokens on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.[150]

4. Rule 25030—Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for security tokens shall be $0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for security tokens and promotes compliance with Rule 612 of Regulation NMS.[151] Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Where a bid or offer or order is priced less than or equal to $1.00 per share, the minimum acceptable increment is $0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all security tokens of $0.01 irrespective of whether the security token is trading below $1.00.

5. Rule 25040—Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed security tokens and non-BSTX-listed security tokens. For BSTX-listed security tokens, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begins at 9:30 a.m. ET.[152] Similar to how the Exchange's opening process works for options trading, BSTX would disseminate a theoretical opening price (''TOP'') to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.[153] Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) ''Paired Tokens,'' which is the quantity of security tokens that would execute at the TOP; (ii) the ''Imbalance Quantity,'' which is the number of security tokens that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the ''Imbalance Side,'' which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, ''Broadcast Information'').[154] Broadcast Information will be recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Tokens to change. With respect to priority during the opening match for all security tokens, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed security token will be opened by calculating the optimum number of security tokens that could be matched at a price, taking into consideration all the orders on the BSTX Book.[155] Proposed Rule 25040(a)(5) provides that the opening match price is the price which results in the matching of the highest number of security tokens. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting security tokens in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest security tokens in the BSTX Book, the price closest to the previous day's closing price will be selected.[156] Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time priority.[157] When the BSTX System cannot determine an opening price of a BSTX-listed security token at the start of regular trading hours, BSTX would nevertheless open the security token for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.[158]

For Initial Security Token Offerings (''ISTOs''), the process will be generally the same as regular market openings.

[148] 15 U.S.C. 78f(b)(5).

[149] 15 U.S.C. 78f(b)(5).

[150] *See e.g.,* IEX Rule 11.180.

[151] 17 CFR 242.611.

[152] As a result, order marked IOC submitted during the Pre-Opening Phase will be rejected by the BSTX System. *See* proposed Rule 25040(a)(7).

[153] The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. *See* proposed Rule 25040(a)(2).

[154] Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (*i.e.,* bid higher or offer lower) than the TOP will be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

[155] *See* proposed Rule 25040(a)(4)(ii).

[156] With respect to initial security token offerings where there is no previous day's closing price, the opening price will be the price assigned to the security token by the underwriter for the offering, referred to as the ''ISTO Reference Price.'' *See* Proposed Rule 25040(a)(5)(ii)(3).

[157] *See* proposed Rule 25040(a)(6).

[158] *Id.*

However, in advance of an ISTO auction (''ISTO Auction''), the Exchange shall announce a ''Quote-Only Period'' that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the ISTO Auction.[159] The Quote-Only Period may be extended in certain cases.[160] As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or Paired Tokens to change.[161] In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.[162] Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.[163] Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).[164]

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (''Halt Auctions''). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.[165] This Quote-Only Period may be extended in certain circumstances.[166] The Exchange proposes to disseminate the same Broadcast Information as it does for an ISTO Auction and would similarly provide notification of any extension to the quote-only period as with an ISTO Auction.[167] The transition to normal trading would also occur in the same manner as ISTO Auctions, as described above.[168]

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an ISTO Auction the Exchange will publicly announce that the Quote-Only Period for the ISTO Auction, and the Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.[169] Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted security token on the BSTX Book will be canceled after which the Exchange will open the security token for trading without an auction.[170]

The opening process with respect to non-BSTX-listed security tokens is set forth in proposed Rule 25040(e). Pursuant to that rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (''Opening Process''). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.[171] Generally, the price of the Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for re-opening a non-BSTX-listed security token subject to a halt.[172] The proposed opening process for security tokens listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading security tokens, or the equivalent thereof, given that there are no other exchanges currently trading security tokens. The proposed process for opening security tokens listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.[173]

Consistent with Section 6(b)(5) of the Exchange Act,[174] the Exchange believes that the proposed process for opening trading in BSTX-listed security tokens and security tokens listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of security tokens.[175] Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in security tokens

[159] *See* proposed Rule 25040(b)(1).

[160] Such cases are when: (i) There is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the ISTO or of the Exchange to complete the ISTO. *See* proposed Rule 25040(b)(2).

[161] *See* proposed Rule 25040(b)(3).

[162] *See* proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. *Id.*

[163] *See* proposed Rule 25040(b)(5).

[164] As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an ISTO Auction would be rejected. *See* proposed Rule 25040(b)(6).

[165] *See* proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected.

[166] *See* proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (''Initial Extension Period''). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (''Additional Extension Period'') until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. *Id.*

[167] *See* proposed Rule 25040(c)(3)–(5).

[168] *Id.*

[169] *See* proposed Rule 25040(d)(1).

[170] *See* proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (*see e.g.,* IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an ISTO Auction or Halt Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[171] *See* proposed Rule 25040(e)(2).

[172] *See* proposed Rule 25040(e)(5).

[173] *See e.g.,* Cboe BZX Rule 11.24.

[174] 15 U.S.C. 78f(b)(5).

[175] The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a security token on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is simple and fair way to establish the closing price of a security token that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. *Id.* This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. *Id.*

listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed security token, the Exchange will proceed by opening regular hours trading in the security token anyway, which is consistent with the manner in which other exchanges open trading in securities.[176] With respect to initial public offerings of security tokens and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to initial security token offerings, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest.[177] Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

6. Rule 25050—Trading Halts

BSTX proposes to adopt rules relating to trading halts [178] that are substantially similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (''LULD Plan''), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading security tokens. Below is an explanation of BSTX's approach to certain categories of orders during a trading halt:

7. *Short Sales*—BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.

8. *Pegged Orders*—BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.

9. *Routable Orders*—Because BSTX would initially be the only exchange for trading security tokens, rules relating to handling of routable orders during a trading halt have been omitted.

10. *Limit Orders*—Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.[179]

11. *Auction Orders, Market Orders, and FOK Orders*—BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.[180]

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security token subject to a trading halt, reject any incoming orders in that security token, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.[181]

BSTX believes that it is in the public interest and furthers the protection of investors, consistent with Section 6(b)(5) of the Exchange Act [182] to provide for a mechanism to halt trading in security tokens during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act [183] because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

12. Rule 25060—Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders.[184] Orders that do not designate a limit price would be rejected.[185] The BSTX System would also only support two time-in-force (''TIF'') designations initially: (i) DAY; and (ii) immediate or cancel (''IOC''). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.[186] All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100.

Consistent with Section 6(b)(5) of the Exchange Act,[187] the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very simply exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch

[176] *See e.g.,* BOX Rule 7070.

[177] The Exchange notes that its proposed opening, ISTO Auction, and Halt Auction processes are substantially similar to those of another exchange. *See* Cboe BZX Rule 11.23. The key differences between the Exchange's proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex, and that the Exchange does not proposes to use order auction collars to limit the price at which a security token opens. The Exchange does not believe that auction collars are necessary at this time because there are a variety of other mechanisms in place to prevent erroneous orders and the execution of an opening cross at an erroneous price (*e.g.,* market access controls pursuant to Rule 15c3–5 and the ability of an underwriter to request an extension to the Quote-Only Period in an ISTO Auction).

[178] The Exchange notes that rules on opening trading for non-BSTX-listed security token are set forth in proposed Rule 25040(e).

[179] *See e.g.,* Cboe BZX 11.18(e)(5)(B).

[180] IOC orders will be handled pursuant to proposed Rule 25050(g)(5).

[181] Trading would resume pursuant to proposed Rule 25040(e)(5). *See* proposed Rule 25050(g)(7).

[182] 15 U.S.C. 78f(b)(5).

[183] *Id.*

[184] The BSTX System will also accept incoming Intermarket Sweep Orders (''ISO'') pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. *See e.g.,* Cboe BZX Rule 11.9(d).

[185] Proposed Rule 25060(c)(1).

[186] Proposed Rule 25060(d)(1).

[187] 15 U.S.C. 78f(b)(5).

of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

13. Rule 25070—Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange's oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (*e.g.,* exercise price) because security tokens are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,[188] because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (*i.e.,* above) the best bid, unless the sell order is marked ''short exempt'' pursuant to Regulation SHO.

14. Rule 25080—Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.[189]

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act [190] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for security token transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market ''short exempt,'' is consistent with the Exchange Act because it is intended promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

15. Rule 25090—BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however may set default values for this control. The proposed rule also provides a means by which all of a BSTX Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act [191] because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

16. Rule 25100—Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an ''automated market center'' within the meaning of Regulation NMS and will display ''automated quotations'' at all times except in the event of a system

[188] 15 U.S.C. 78f(b)(5).

[189] *See e.g.,* Cboe BZX Rule 11.13(a)(2)–(3) governing regular trading hours.

[190] 15 U.S.C. 78f(b)(5).

[191] 15 U.S.C. 78f(b)(5).

malfunction.[192] In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.[193] BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency and shall settle on a T+1 basis (*i.e.,* trade date plus one additional business day) where permitted under the rules, policies, and procedures of the relevant registered clearing agency. However, pursuant to proposed Rule 25100(d), the BSTX Participants that are party to the trade may agree to a shorter or longer settlement cycle as may be permitted by the relevant registered clearing agency and where they have so agreed shall communicate that agreement to the Exchange in a manner consistent with the Exchange's procedures. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX Participants to satisfy these obligations.[194]

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act [195] because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in security tokens, consistent with Section 6(b)(5) of the Exchange Act.[196]

17. Rule 25110—Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (''Official'').[197] BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.[198] Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the ''Reference Price'' [199] by an amount that equals or exceeds specified ''Numerical Guidelines.'' [200] The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.[201] Similar to other exchanges clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.[202] Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.[203] The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,[204] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section

[192] 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an ''automated trading center'' displaying ''automated quotations'' relates to whether or not an exchange's quotations may be considered protected under Regulation NMS. *See* Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to security tokens.

[193] 17 CFR 242.602.

[194] These proposed provisions are substantially similar to those of exchanges. *See e.g.,* Nasdaq Rule 4627 and IEX Rule 10.250.

[195] 15 U.S.C. 78f(b)(5).

[196] *Id.*

[197] A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous will be removed from the Consolidated Tape. Proposed Rule 25110(a).

[198] Proposed Rule 25110(b). The Official may also consider certain ''outlier'' transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60) minutes after the transaction. Proposed Rule 2511(d).

[199] The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

[200] The proposed Numerical Guidelines are 10% where the Reference Price ranges from $0.00 to $25.00, 5% where the Reference Price is greater than $25.00 up to and including $50.00, and 3% where the Reference Price ranges is greater than $50. Proposed Rule 25110(c)(1).

[201] Proposed Rule 25110(c)(1).

[202] *See* proposed Rule 25110(f)–(j). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (*e.g.,* replacing the term ''security'' with ''security token'').

[203] Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of invests and the public interest. Proposed Rule 25110(d)(2).

[204] 15 U.S.C. 78f(b)(5).

6(b)(5) of the Exchange Act.[205] The proposed rule is substantially similar to the clearly erroneous rules of other exchanges.[206] For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for security tokens will not route to other exchanges.[207] Security tokens would also only trade during regular trading hours (*i.e.,* 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in: (i) Leverage ETF/ETNs; and (ii) unlisted trading privileges securities that are subject to an initial public offering.[208]

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act [209] because it promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.[210] In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

To the extent security tokens become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act [211] at such future date.

18. Rule 25120—Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.[212] Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a ''covered security'' [213] at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security's closing price on the listing market as of the end of Regular Trading Hours on the prior day (the ''Trigger Price''). The proposed rule further specifies the duration of the ''Short Sale Price Test'' and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.[214]

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,[215] because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,[216] and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.[217] Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

19. Rule 25130—Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.[218] Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange notes that there may be no other national securities exchanges trading security tokens upon the launch of BSTX that may be displaying protected quotations. Notwithstanding that there may be no other away markets displaying a protected quotation when trading on

[205] *Id.*

[206] *See e.g.,* Cboe BZX Rule 11.17. Similar to other exchanges' comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more (but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, and securities subject to the LULD Plan.

[207] Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because security token transactions will be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the ''Consolidated Tape'' and provides that clearly erroneous security token transactions will be removed from ''all relevant data feeds disseminating last sale information for security token transactions.'' *See* proposed Rule 25110(a).

[208] The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. *See* IEX Rule 11.270. With respect to leveraged ETFs/ETNs, the Exchange does not expect to support trading of such products at this time, so the Exchange does not believe it is necessary to include provisions related to them.

[209] 15 U.S.C. 78f(b)(5).

[210] *See* BOX Rule 7170(n).

[211] 15 U.S.C. 78s.

[212] *See e.g.,* IEX Rule 11.290.

[213] Proposed Rule 25120(b) provides that the terms ''covered security,'' ''listing market,'' and ''national best bid'' shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

[214] Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that security token on the most recent day on which the security token traded.

[215] 15 U.S.C. 78f(b)(5).

[216] 17 CFR 242.200(g).

[217] 17 CFR 242.201(b)(1).

[218] *See* IEX Rule 25130.

BSTX commences, the Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act [219] because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

20. Rule 25140—Clearance and Settlement: Anonymity

• Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

• The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act [220] because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.[221]

J. Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200–25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (''DMMs'') in a given security token, allocation of a DMM to a particular security token, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange's discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker's registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.[222]

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each security token in which it is registered as a Market Maker.[223] The Exchange proposes that such quotes must be entered within a certain percentage, called the ''Designated Percentage,'' of the National Best Bid (Offer) price in such security token (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.[224] The Exchange proposes that the Designated Percentage would be 30%.[225] The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).[226] The Exchange believes that the proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer (''NBBO'') in security tokens and to ensure fair and orderly markets. The Exchange notes that pursuant to proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM's quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the ''Defined Limit,'' in a security token for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that security token. The Exchange proposes that the Defined Limit shall be 31.5%.[227] Under the proposed Rules, Market Maker's quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.[228] Under the proposed Market Maker and DMM Rules, Market Makers and DMMs two-sided quotation obligations must be maintained for a quantity of a ''normal unit of trading'' which is defined as one security token.[229] The Exchange believes that security tokens may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one security token will be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) The modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be $0.01; and

[219] 15 U.S.C. 78f(b)(5).

[220] 15 U.S.C. 78f(b)(5).

[221] *See e.g.* IEX Rule 11.250.

[222] Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

[223] *See* proposed Rule 25210(a)(1).

[224] *See* proposed Rule 25210(a)(1)(ii)(A).

[225] *See* proposed Rule 25210(a)(1)(ii)(B).

[226] *See* NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the Designated Percentage for Tier 2 NMS stocks priced below $1.00 is 30% and for Tier 2 NMS stocks priced above $1.00 is 28%).

[227] *See* proposed Rule 25210(a)(1)(ii)(3).

[228] *See* proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such a demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

[229] *See* proposed Rule 25210(a)(1).

(iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of security tokens pursuant to proposed Rule 25230, which is described below.[230] For security tokens in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all security tokens in which such Participant serves as DMM.[231] The proposed Rule provides, among other things, that a there will be no more than one DMM per security token and that a DMM must maintain information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market Maker in the same security token (to the extent applicable).[232] The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker[233] and similar to the same process for DMMs on other exchanges.[234] The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchanges proposes to add a provision stating that the Exchange is not required to assign a DMM if the security token has an adequate number of BSTX Market Makers assigned to such security token. The purpose of this requirement is to acknowledge the possibility that a security token need not necessarily have a DMM provided there are at least two Market Makers assigned to the security token, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular security token. Proposed Rule 25230(a) sets forth the basic eligibility criteria for a when a security token may be allocated to a DMM, providing that this may occur when the security token is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the security token.[235] Proposed Rule 2530(a) also specifies that a DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.[236]

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a security token. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to selects its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of two non-DMM Market Makers must be assigned to its security token consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a DMM for a security token for at least one year unless compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)–(3), with the exception that the Exchange may shorten the one year DMM commitment period in compelling circumstances.[237] Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity security token listing after preferred security token, listed company mergers, target security tokens, and closed-end management investment companies.[238] Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)–(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similarly to corresponding provisions in NYSE American Rule 7.25E(c). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.[239] Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a security token as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)–(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act[240] because they are designed to

[230] *See* proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an [sic]

[231] *See* proposed Rule 25220(c).

[232] *See* proposed Rule 25220(b).

[233] *See* proposed Rule 25210(d).

[234] *See e.g.,* NYSE American Rule 7.24E(b)(4).

[235] As previously noted, pursuant to proposed Rule 26106, a security token may have a minimum of two non-DMM market makers to be eligible for listing on the Exchange. Consequently, a security token might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

[236] *See* proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

[237] The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

[238] *See* proposed Rule 25230(b)(4)–(11).

[239] In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

[240] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,[241] and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.[242] The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in security tokens. Although the corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all security token trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of security token investors, which the Exchange believes promotes the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[243]

The Exchange has also proposed that the minimum quotation size of Market Makers will be one security token. As noted above, the Exchange believes that security tokens may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.,* 100 shares) to one security token would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

K. BSTX Listing Rules (Rule 26000 and 27000 Series)

The BSTX Listing Rules, which include the Rule 26000 and 27000Series, have been adapted from, and are substantially similar to, Parts 1–12 of the NYSE American LLC Company Guide.[244] Except as described below, each proposed Rule in the BSTX 26000 and 27000 series is substantially similar to a Section of the NYSE American Company Guide.[245] Below is further detail.

- The BSTX Listing Rules (26100 series) are based on the NYSE American Original Listing Requirements (Sections 101–146).[246]
- The BSTX Original Listing Procedures (26200 series) are based on the NYSE American Original Listing Procedures (Sections 201–222).
- The BSTX Additional Listings Rules (26300 series) are based on the NYSE American Additional Listings Sections (Sections 301–350).
- The BSTX Disclosure Policies (26400 series) are based on the NYSE American Disclosure Policies (Sections 401–404).
- The BSTX Dividends and Splits Rules (26500 series) are based on the NYSE American Dividends and Stock Splits Sections (Sections 501–522).
- The BSTX Accounting; Annual and Quarterly Reports Rules (26600 series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603–624).
- The BSTX Shareholders' Meetings, Approval and Voting of Proxies Rules (26700 series) are based on the NYSE American Shareholders' Meetings, Approval and Voting of Proxies Sections (Sections 701–726).[247]
- The BSTX Corporate Governance Rules (26800 series) are based on the NYSE American Corporate Governance Sections (Sections 801–809).
- The BSTX Additional Matters Rules (26900 series) are based on the NYSE American Additional Matters Sections (Sections 920–994).
- The BSTX Suspension and Delisting Rules (27000 series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001–1011).
- The BSTX Guide to Filing Requirements (27100 series) are based on the NYSE American Guide to Filing Requirements (Section 1101).
- The BSTX Procedures for Review of Exchange Listing Determinations (27200 series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201–1211).

Notwithstanding that the proposed BSTX Listing Rules are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Listing Rules. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of the BSTX Listing Rules by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[248]

With respect to initial listing standards, as set forth in proposed Rule 26101, the Exchange proposes to adopt listing standards that are 20% lower than the NYSE American listing rules on which they are based.[249] For example, NYSE American provides that in its initial listing standard 1, the size of shareholders' equity must be at least $4,000,000 and the pre-tax income from continuing operations for a company to be eligible for listing must be at least $750,000 in its last fiscal year, or in two

[241] *See* NYSE American Rule 7, Section 2.

[242] In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

[243] 15 U.S.C. 78f(b)(5).

[244] All references to various ''Sections'' in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

[245] The Exchange notes that while the numbering of BSTX's Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (*e.g.,* foreign issuers, other than those from Canada). Further, the Exchange formulated a small amount of new rules to reflect requirements relating to the use of blockchain technology as an ancillary recordkeeping mechanism, as described more fully herein. The Exchange also proposes to modify cross-references in the proposed Listing Rules to accord with its Rules.

[246] Pursuant to proposed Rule 26135, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q–1.

[247] The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (*e.g.,* proxy follow-up mailings) are the same as those charged by NYSE American. *See e.g.,* proposed IM–26722–8 *cf.* NYSE American Section 722.80.

[248] 15 U.S.C. 78f(b)(5).

[249] *See* NYSE American Section 101.

of its last three fiscal years.[250] BSTX proposes that these thresholds would be $3,200,000 and (size of shareholders' equity) and $600,000 (pre-tax income) respectively.[251] The Exchange also proposes to adopt initial listing requirements for secondary classes of security tokens based on Nasdaq Rule 5510 with quantitative standards also 20% reduced as compared to the source rule (Nasdaq Rule 5510).[252] Specifically, proposed BSTX Rule 26101(i) sets forth certain requirements for a secondary class of a security token such as a minimum bid price of at least $3 per security token, at least 80 Round Lot[253] holders, at least 160,000 publicly held, and a market value of publicly held security tokens of at least $2.8 million.[254]

The Exchange believes that the proposed thresholds are sufficiently robust to assure that only bona fide companies will be listed on BSTX. The Exchange notes that non-quantitative criteria for exchange listing are important in ensuring that bona fide companies will list on the Exchange and that all non-quantitative criteria proposed by the Exchange substantially match existing standards of other national securities exchanges, such as NYSE American. The Exchange believes that the proposed quantitative listing standards, in combination with non-quantitative listing standards such as corporate governance requirements and two years of operation for certain listing standards,[255] are sufficient to ensure high quality issuers and to protect investors and the public interest and promote fair and orderly markets in accordance with Section 6(b)(5) of the Exchange Act.[256] In addition, by modestly lowering the quantitative thresholds relative to other exchanges, the Exchange believes that the proposed listing standards will promote capital formation by expanding the universe of possible issuers and issuers of secondary classes. The Exchange also notes that its proposed quantitative listing thresholds exceed those of another listing exchange.[257] Thus, the Exchange believes that only issuers with substantial public float, investor base, and trading interest will be listed on the Exchange.

The Exchange believes the proposed rules providing an additional initial listing requirement for preferred security tokens, reduced quantitative listing thresholds, and provide an additional option for listing subscription rights would expand the possible universe of companies that would be eligible to list on the Exchange. The Exchange believes that these proposed rules would help remove impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[258] Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers. The Exchange notes that these Rules are based upon existing standards in the NYSE American LLC Company Guide.

In certain instances, BSTX proposes to add additional provisions not currently provided for in the NYSE American LLC Company Guide that are specific to security tokens. For example, pursuant to proposed Rule 26230 (Security Token Architecture Audit), prior to approving a security token for trading on BSTX, the Exchange would conduct an audit of the security token's architecture to ensure compliance with the BSTX Protocol as outlined in Rule 26138.[259] The purpose of this requirement is to ensure that the design and structure of a prospective BSTX-listed company's security token is compatible with the BSTX Protocol for purposes of facilitating updates to the blockchain as an ancillary recordkeeping mechanism. The Exchange may use third party service providers that have demonstrated sufficient technical expertise in blockchain technology and an understanding of the BSTX Protocol to conduct this audit on behalf of the Exchange. The Exchange believes that these proposed Rules would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act,[260] because they would facilitate the ancillary recordkeeping mechanism for BSTX-listed security tokens which is a first step toward the potential integration of blockchain technology to securities transactions. Without ensuring that BSTX-listed companies' security tokens are compatible with the BSTX Protocol, the use of blockchain technology as an ancillary recordkeeping mechanism could be impaired.

As discussed above, the definitions in proposed Rule 26000 are designed to facilitate understanding of the BSTX Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.[261]

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.[262] The Exchange believes that these additional disclosure

[250] *Id.* at Section 101(a)(1) and (2). The Exchange notes that it has proposed in Rule 26101(a)(4) as a component of Initial Listing Standard 1 that a prospective issuer would be required to have an aggregate market value of publicly held security tokens of $2,400,000. NYSE American Section 101(a) does not provide for an aggregate market value of publicly held securities explicitly in its rules, but does appear to provide for such a requirement in certain other materials related to its listing rules. *See e.g.,* NYSE American Initial Listing Standards *available at https://www.nyse.com/publicdocs/nyse/listing/NYSE_American_Initial_Listing_Standards.pdf* (noting with respect to ''Standard 1'' a requirement of ''$3MM'' for the ''Market value of public float''). The Exchange proposes the threshold of $2,400,000 as a 20% reduction of this standard.

[251] *See* proposed BSTX Rule 26101(a)(1) and (2). As another example proposed initial listing standard 4, as set forth in proposed BSTX Rule 26101(d)(1) would require that a prospective listed company have a total market capitalization of $60,000,000 (or total assets and total revenue of $60,000,000 each in its last fiscal year, or two of its last three fiscal years), while the parallel NYSE American provisions set this threshold at $75,000,000.

[252] *See* proposed BSTX Rule 26101(i).

[253] A ''Round Lot'' is proposed to be defined in Rule 26000(a)(7) as 100 security tokens of a particular issuer.

[254] Nasdaq Rule 5510 sets these thresholds at $4 per security token, 100 round lot holders, 200,000 publicly held shares, and a market value of publicly held shares of $3.5 million.

[255] *See e.g.,* proposed BSTX Rule 26101(a)(1) and (b)(1).

[256] 15 U.S.C. 78f(b)(5).

[257] *See* Nasdaq BX Venture Market Rules 5505 and 5506. In contrast with BX Ventures, the Exchange will not list securities that will be considered ''penny stocks.'' Thus, while BX Ventures implemented certain enhanced issuer vetting procedures, the Exchange does not deem these necessary, since it has retained non-quantitative listing criteria at a level comparable to traditional exchanges like NYSE American along with quantitative listing criteria significantly more robust than BX Ventures. The Exchange therefore believes that only bona fide companies will be able to meet its proposed listing criteria.

[258] 15 U.S.C. 78f(b)(5).

[259] Proposed Rule 26230 further provides that an applicant that is denied pursuant to this section may appeal the decision via the process outlined in the Rule 27200 Series.

[260] *Id.*

[261] *Id.*

[262] *See* Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[263]

The Exchange's proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to use two market makers in lieu of a DMM.[264] Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.[265] Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of two (2) market makers would be assigned to the security token. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.[266] The Commission has previously approved exchange rules providing for only two market makers to be assigned to a particular security, either initially or on an ongoing basis, and, in accordance with these previously approved rules, the Exchange believes two market makers would be sufficient to ensure fair and orderly markets and provide sufficient liquidity for security tokens.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a ''specialist,'' since BSTX will not have a specialist,[267] or references to certificated equities, since security tokens will be uncertificated equities.[268] As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.[269] In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.[270] In its proposed Rules, the Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules;[271] instead, these forms will be included in the BSTX Listing Supplement.[272] The Exchange is not proposing to adopt provisions relating to future priced securities at this time.[273] In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies,[274] or to allow for issuers to

[263] *Id.*

[264] *See* proposed Rule 26205. The Exchange believes that two market makers are sufficient to assure competing quotations for potential buyers and sellers of security tokens on BSTX. The Exchange notes that other listing markets require two market makers for their initial listing requirements or for their continued listing requirements, and therefore the Exchange believes that its proposal will ensure sufficient liquidity in security tokens. *See* Nasdaq BX Ventures Rule 5505(a)(7), Nasdaq BX Ventures Rule 5506(a)(5), and Nasdaq Stock Market Rule 5225(4)(B).

[265] Exchange personnel responsible for managing the listing and onboarding process will be responsible for determining to which DMM a security token will be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each security token is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel will be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a ''Listing Qualifications Analyst'' that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a ''Listing Qualifications Analyst,'' but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to the BSTX Listing Rules.

[266] *Id.*

[267] *See e.g.,* NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

[268] *See e.g.,* NYSE American Section 117 including a clause relating to paired securities for which ''the stock certificates of which are printed back-to-back on a single certificate''). Similarly, the Exchange has proposed to replace certain references to the ''Office of General Counsel'' contained in certain NYSE American Listing Rule (*see e.g.,* Section 1205) with references to the Exchange's ''Legal Department'' to accommodate differences in BSTX's organizational structure. *See* proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange's ''Hearing Committee'' as defined in Section 6.08 of the Exchange's By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

[269] *See* proposed Rule 26623.

[270] Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX's Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American's corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (*e.g.,* requiring that a member state the actual number of shares for which a proxy is given—NYSE American Rule 578) or, in some cases, relate to certificated securities (*e.g.,* NYSE American Rule 579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578–585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. *See e.g.,* Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange's other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants' obligations with respect to proxies.

[271] The forms found in NYSE American Section 722.20 and 722.40 will be included in the BSTX Listing Supplement.

[272] The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms. Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has included as Exhibit 3G. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American's sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM–26722–2 and IM–26722–4. The Exchange expects that these proposed materials in the BSTX Listing Supplement will be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

[273] *See e.g.,* NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of security tokens. The Exchange notes that numerous other listing exchanges do not have a similar provision to NYSE American Section 950. *See e.g.,* IEX Listing Rules.

[274] *See* proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers

Continued

transfer their existing securities to BSTX.[275] Similarly, the Exchange is not proposing at this time to support security token debt securities, so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities [276] or the trading of units.[277] The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (*e.g.,* by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.[278]

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional security tokens and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in security tokens.[279] The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[280]

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's security token is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that security token trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.[281]

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a director may serve [282] and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.[283] The Exchange also notes that, unlike the current NYSE American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-asset backed securities and foreign issues (other than those from Canada), since the Exchange does not proposed to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since security tokens listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.[284]

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Further, the differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act.[285]

L. Fees (Rule 28000 Series)

The Exchange proposes to set forth as its Rule 28000 Series (Fees) the Exchange's authority prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate.[286] As provided in proposed Rule 28000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.[287] Proposed Rule 28010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from

of security tokens, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers—*e.g.,* NYSE American Section 801(f).

[275] Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

[276] *See e.g.,* NYSE American Sections 1003(b)(iv) and (e).

[277] *See e.g.,* NYSE American Sections 106(f), 401(i), and 1003(g).

[278] 15 U.S.C. 78f(b)(5).

[279] The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in security tokens are not permitted by the Exchange.

[280] 15 U.S.C. 78f(b)(5).

[281] *Id.*

[282] *See* proposed Rule 26802(d).

[283] *See* proposed Rule 26801(b).

[284] As with all sections of the proposed rules, references to ''securities'' have been changed to ''security tokens'' where appropriate and, in the Rule 27000 series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

[285] 15 U.S.C. 78f(b)(5).

[286] As described above, recording information to the Ethereum blockchain requires payment of gas by the individual or entity who desires to post such a record. The payment of gas will be performed by the Wallet Manager as a service provider to the Exchange carrying out the function of updating the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange does not plan to charge a fee to cover the costs associated with gas and updating the Ethereum blockchain. The Exchange also notes that gas costs are typically negligible and anticipates actual monthly gas expenditures to be of a de minims amount.

[287] Proposed Rule 28000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 28000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 28000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act [288] because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the Exchange's facilities. The Exchange notes that the proposed Rule 28000 Series is substantially similar to the existing rules of another exchange.[289] The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX in advance of the launch of BSTX.

IV. Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to ''minor rule violations,'' are set forth in the Rule 12000 Series of the Exchange's current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange's Minor Rule Violation Plan (''MRVP'') specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Exchange Act [290] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[291] The Exchange's MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.[292] Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,[293] which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.[294]

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act,[295] because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

V. Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in security tokens, a type of equity security, on the Exchange, the Exchange proposes to amend those Exchange Rules that would apply to BSTX Participants, but that currently only contemplate trading in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B:

- *Rule 100(a) (Definitions)* ''*Options Participant*'' *or* ''*Participant*''*:* The Exchange proposes to change the definition of ''Options Participant or Participant'' to ''Participant'' to reflect Options Participants and BSTX Participants and to amend the definition as follows: ''The term 'Participant' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an 'Options Participant' and 'BSTX Participant.' ''
- *Rule 100(a) (Definitions)* ''*Options Participant*''*:* The Exchange proposes to add a definition of ''Options Participant'' that would be defined as follows: ''The term 'Options Participant' is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.'' [296]
- *Rule 2020(g)(2) (Participant Eligibility and Registration):* The Exchange proposes to delete subsection (g)(2) and replace it with the following: ''(2) persons associated with a Participant whose functions are related solely and exclusively to transactions in

[288] 15 U.S.C. 78f(b)(5).

[289] *See* Cboe BZX Rules 15.1 and 15.2.

[290] 17 CFR 240.19d–1(c)(1).

[291] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered ''final'' for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[292] *See e.g.,* IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

[293] 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

[294] 15 U.S.C. 78f(b)(7).

[295] 17 CFR 240.19d–1(c)(2).

[296] In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetically order.

municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.'' [297]

• *Rule 2060 (Revocation of Participant Status or Association with a Participant):* The Exchange proposes to amend Rule 2060 to refer to ''securities transactions'' rather than ''options securities transactions.''

• *Rule 3180(a) (Mandatory Systems Testing):* The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.

• *Rule 7130(a)(2)(v) Execution and Price/Time Priority:* The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term ''Request for Quote'' or ''RFQ'' under the Rules after the proposed renumbering.

• *Rule 7150(a)(2) (Price Improvement Period):* The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.

• *Rule 7230 (Limitation of Liability):* The Exchange proposes to amend the references in Rule 7230 to ''Options Participants'' to simply ''Participants.''

• *Rule 7245(a)(4) (Complex Order Price Improve Period):* The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term ''Professional'' after the proposed renumbering.

• *IM–8050–3:* The Exchange proposes to update the cross reference to Rule 100(a)(55) to refer to Rule 100(a)(56), which defines the term ''quote'' or ''quotation'' after the proposed renumbering.[298]

• *Rule 11010(a) ''Investigation Following Suspension'':* The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to ''in BOX options contracts'' and to modify the word ''position'' with the word ''security'' as follows: ''. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.''

• *Rule 11030 (Failure to Obtain Reinstatement):* The Exchange proposes to amend Rule 11030 to replace the reference to ''Options Participant'' to simply ''Participant.''

• *Rule 12030(a)(1) (Letters of Consent):* The Exchange proposes to amend subsection (a)(1) of Rule 12030 to replace the reference to ''Options Participant'' to simply ''Participant.''

• *Rule 12140 (Imposition of Fines for Minor Rule Violations):* The Exchange proposes to amend Rule 12140 to replace references to ''Options Participant'' to simply ''Participant.'' In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange's MRVP. New paragraph (f) of Rule 12140 would provide: ''(f) Transactions on BSTX. Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).''

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with Section 6(b)(5) of the Exchange Act [299] because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act [300] because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange's rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments 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 exchange system. Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion.

VI. Forms To Be Used in Connection with BSTX

In connection with the operation of BSTX, the Exchange proposes to uses a series of new forms to facilitate becoming a BSTX Participant and for issuers to list their security tokens. These forms have been attached hereto as Exhibits 3A—3N. Each are described below.

A. BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which is attached as Exhibit 3A. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicants name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository (''CRD'') number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant's current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of

[297] In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. *See e.g.,* IEX Rule 2.160(m).

[298] Current Exchange Rule 100(a)(55) defines the term ''Quarterly Options Series,'' but the intended reference in IM–8050–3 was the definition of ''quote'' or ''quotation.'' The term ''quote'' or ''quotation'' is currently defined in Rule 100(a)(56), but is proposed to be renumbered as Rule 100(a)(57).

[299] 15 U.S.C. 78f(b)(5).

[300] *Id.*

written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker. Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant's trading representatives (including a copy of each representative's Form U4), a copy of the applicant's written supervisory procedures relating to market making, a description of the source and amount of the applicant's capital, and information regarding the applicant's other business activities and information barrier procedures.

B. BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement is attached as Exhibit 3B. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.

2. Participant acknowledges that BSTX Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange.

3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants. Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

C. BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, attached as Exhibit 3C, includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (*boxoptions.com*).

D. BSTX Security Token Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Token Designated Market Maker Selection Form, which is attached as Exhibit 3D. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Token Market Designated Market Maker Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

E. Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (attached as Exhibit 3E) or the BSTX Participant Clearing Authorization (Market Maker) form (attached as Exhibit 3F). Each form would be maintained by BSTX and each form specifies that the BSTX Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

F. BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, ''listing documentation''). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of security tokens. All listing documentation will be available on the Exchange's website (boxoptions.com). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b–4.[301]

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (attached as Exhibit 3G) or the BSTX Additional Listing Application (attached as Exhibit 3H) to apply for the listing of security tokens on BSTX.[302] The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,[303] for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of security tokens. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of

[301] The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

[302] Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its security token must also provide a legal opinion that the applicant's security token is a security under applicable United States securities laws.

[303] 15 U.S.C. 781(b).

incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.

2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of security tokens outstanding or offered, total security tokens unissued, but reserved for issuance, date authorized, purpose of security tokens to be issued, number of security tokens authorized, and information relating to payment of dividends. This information is required of all applicants listing security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.

6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.

7. For original listing applications only, type of security token listing, including the type of transaction (initial security token offering, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment banker/financial advisor contacts. This information is necessary in order for the Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any security token and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's security token inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's listing standards for listing on the BSTX Security Token Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.

9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, security token design affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).

11. For additional listing applications only, transaction details, including the purpose of the issuance, total security tokens, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any security tokens in the future above the amount they are currently applying for. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse security token splits and changes in states of incorporation. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward security token split or security token dividend, including forward security token split ratios and information related to security token dividends. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary in order to determine the rights associated with the security tokens.

15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary to assess to support the

Exchange's regulatory staff listing qualification review.

16. For additional listing applications only, reconciliation for technical original listing, including security tokens issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional security tokens on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

G. Checklist for Original Listing Application

In order to assist issuers seeking to list its security tokens on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, attached as Exhibit 3I, provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, BSTX security token design affirmation, underwriter's letter (for initial security token offerings only) and relevant SEC filings (*e.g.,* 8–A, 10, 40–F, 20–F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

H. BSTX Security Token Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the Exchange, a company must execute the BSTX Security Token Market Listing Agreement (the ''Listing Agreement''), which is attached as Exhibit 3J. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.

2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed security tokens or in the rights, benefits, and privileges of the holders of such security tokens.

3. Company understands that the Exchange may remove its security tokens from listing on the BSTX Security Token Market, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

4. In order to publicize the Company's listing on the BSTX Security Token Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange (''Corporations'') of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.

6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.

8. Company agrees to pay when due all fees associated with its listing of security tokens on the BSTX Security Token Market, in accordance with the Exchange's rules.

9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1–3 and 6–8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service markets, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

I. BSTX Security Token Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Token Market Corporate Governance Affirmation, attached as Exhibit 3K, enables a company to confirm to the Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Token Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Token Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

J. Security Token Design Affirmation for the BSTX Security Token Market

In accordance with proposed Rule 26138, in order for a security token to be admitted to dealings on BSTX, such security token must follow the BSTX Security Token Protocol. The BSTX Security Token Protocol will be

provided via Regulatory Circular and posted on the Exchange's website. The Exchange has included an overview of the BSTX Security Token Protocol as Exhibit 3N. The Security Token Design Affirmation, attached as Exhibit 3L, enables a company to affirm to the Exchange that it is in compliance with the applicable standards. Companies are required to submit a Security Token Design Affirmation upon initial listing on the Exchange. This Security Token Design Affirmation assists the Exchange's staff in verifying that an issuer's security tokens meet the requirements of the BXTS security token protocol.

K. Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial security token offering must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and attached as Exhibit 3M, is necessary to assist the Exchange's regulatory staff in assessing the offering's compliance with BSTX listing standards for initial security token offerings.

L. BSTX Security Token Protocol Summary Overview

BSTX Rule 26138 requires that a BSTX listed company's security tokens must comply with the BSTX Security Token Protocol to trade on BSTX. Exhibit 3N provides fundamental information related to the Ethereum blockchain and background information on the functions, configurations, and events of the Asset Smart Contract of the BSTX Security Token Protocol. Exhibit 3N also provides information on the Registry and Compliance features of the BSTX Security Token Protocol.

VII. Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.[304] Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform security token listing regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of security token trading on the BSTX System.

Section 17(d) of the Exchange Act[305] and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,[306] the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.[307]

Rule 17d–2 under the Exchange Act[308] permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (''common members''). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.[309] The Exchange may choose to join certain Rule 17d–2 agreements such as the agreement allocating responsibility for insider trading rules.[310]

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange's options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to BSTX. Finally, as it does with options, the Exchange will perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating ''clearly erroneous trades'' pursuant to proposed Rule 25110. The Exchange shall also oversee the onboarding and application process for BSTX Participants as well as compliance by issuers of security tokens with the applicable initial and continuing listing requirements, including compliance with the BSTX Protocol.[311]

VIII. NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plans for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,[312] the Exchange believes that joining the same set of NMS plans that all other national securities exchanges that trade equities must join fosters

[304] 15 U.S.C. 78f.

[305] 15 U.S.C. 78q(d).

[306] 17 CFR 240.17d–1.

[307] *See* Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

[308] 17 CFR 240.17d–2.

[309] Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

[310] Exchange Act Release No. 84392 (October 16, 2018), 83 FR 52243 (October 16, 2018).

[311] *See* proposed Exchange Rules 26230 (Security Token Architecture Audit) and 26138 (BSTX Security Token Protocol).

[312] 15 U.S.C. 78f(b)(5).

cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,[313] in general and with Section 6(b)(5) of the Exchange Act,[314] in particular, in that it is designed 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; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. However, BSTX would also require reporting of end-of-day security token balances to the Exchange in order to facilitate the use of blockchain technology as an ancillary recordkeeping mechanism. The Exchange believes that using blockchain technology as an ancillary recordkeeping mechanism that operates in parallel with the traditional trading, recordkeeping, and clearance and settlement structures that market participants are familiar with is an important first step toward exploring the potential uses and benefits of blockchain technology in securities transactions. The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of security tokens using a price-time priority model and the clearance and settlement of security tokens will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an ancillary recordkeeping mechanism in connection with listed equity securities.

In order to implement the use of blockchain technology as an ancillary recordkeeping mechanism, the Exchange proposes two requirements pursuant to proposed Rule 17020 to: (i) Obtain a wallet address through BSTX to which end-of-day security token balances may be recorded to the Ethereum blockchain as an ancillary recordkeeping mechanism; and (ii) requiring BSTX Participants to report their end-of-day security token balances to BSTX to facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism to reflect changes in ownership as a result of trading security tokens.

The Exchange believes that the proposed address whitelisting and end-of-day security token balance reporting requirement is consistent with the Exchange Act, and Section 6(b)(5)[315] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens and does not unfairly discriminate among BSTX Participants, all of whom are subject to the same wallet address and end-of-day reporting requirement. The requirement to obtain a wallet address is a one-time, minimal obligation similar to obtaining an MPID or other market participant identifier that is applicable to each BSTX Participant. The end-of-day security token balance reporting obligation would be used to update the Ethereum blockchain as an ancillary recordkeeping mechanism, which the Exchange believes would be a first step in demonstrating the potential use of blockchain technology in connection with securities transactions. The Exchange does not propose to charge a fee in connection with either of these requirements. As discussed in greater detail above,[316] the Exchange believes that these proposed requirements are consistent with the Exchange Act as they are necessary to facilitate the blockchain-based ancillary recordkeeping mechanism and are consistent with authority that the Commission has already approved for exchanges regarding furnishment of records by members of the exchange. The Exchange believes that blockchain technology offers potential benefits to investors, and while such benefits may not be immediately evident while the blockchain is used only as ancillary recordkeeping mechanism, the Exchange believes that a measured and gradual introduction of blockchain technology is a useful way to explore these potential benefits that is consistent with the protection of investors and the public interest.

The Exchange also proposes to extend the address whitelisting and end-of-day security token balance reporting requirements to other market participants trading security tokens OTC during a one year pilot program. The purpose of the Pilot is to allow for security tokens to be able to trade freely OTC while still ensuring that BSTX has sufficient end-of-day security token balance information that it needs in order to update the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange believes that one year would allow sufficient time for the Exchange to coordinate with FINRA to promote FINRA's adoption of a FINRA rule to codify the end-of-day security token balance reporting requirement. As discussed in greater detail above,[317] the Exchange believes that the proposed Pilot is consistent with the Exchange Act and Section 6(b)(5)[318] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in security tokens by ensuring that BSTX has sufficient information to be able to update the Ethereum blockchain to reflect ownership of security tokens as an ancillary recordkeeping mechanism. The Exchange believes that the proposed requirements of obtaining a wallet address from BSTX and providing end-of-day security token position reports to the Exchange imposes a minimal burden and is similar to existing OTC reporting obligations of market participants, as described above.

For the same reasons, the Exchange also believes that the Pilot is consistent

[313] 15 U.S.C. 78a *et seq.*

[314] 15 U.S.C. 78f(b)(5).

[315] 15 U.S.C. 78f(b)(5).

[316] *See supra* Parts II.G. and I for further discussion regarding why these proposed requirements are consistent with the Exchange Act.

[317] *See supra* Part II.J for further discussion regarding why the Exchange believes the proposed Pilot is consistent with the Exchange Act.

[318] 15 U.S.C. 78f(b)(5).

with Exchange Act Rules 19c–1 [319] and 19c–3,[320] which generally prohibit the rules, policies, or practices of a national securities exchange from prohibiting, conditioning or otherwise limiting, directly or indirectly, the ability of member from transacting in a security listed on the exchange (or a security to which unlisted trading privileges on the exchange have been granted) otherwise than on the exchange. During the Pilot, market participants would not be limited in their ability to trade security tokens otherwise than on BSTX because security tokens could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. During the limited duration of the Pilot, proposed BSTX Rule 17020(d) would only require market participants, including non-BSTX Participants, to obtain a wallet address and agree to report their end-of-day security token balances to BSTX.

(B) The Exchange's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange operates in an intensely competitive global marketplace for transaction services. Relying on its array of services and benefits, the Exchange competes for the privilege of providing market services to broker-dealers. The Exchange's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change has the potential to result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants may access the Exchange and use its facilities, (3) security token transactions may be cleared and settled, (4) security token transactions occurring OTC, and (5) security token transactions occurring on other exchanges that might extend unlisted trading privileges to security tokens.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Listing Rules in the 26000 and 27000 Series that affect issuers and their ability to list security tokens for trading are based substantially on the current rules of NYSE American. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: participation on BSTX (Rule 18000 Series); business conduct for BSTX participants (Rule 19000 Series); financial and operational rules for BSTX participants (Rule 20000 Series); supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC. The address whitelisting and end-of-day security token balance reporting requirements to facilitate the use of the Ethereum blockchain as an ancillary recordkeeping mechanism in proposed Rule 17020 would apply equally to all BSTX Participants and therefore would not impose any different burden on one BSTX Participant compared to another. The Exchange believes that these requirements would impose only a minimal burden on BSTX Participants that is unlikely to materially impact the competitive balance among investors and traders of security tokens.

Regarding consideration (3) above and the manner in which security token transactions may be cleared and settled, the Exchange proposes to clear and settle security tokens in accordance with the rules, policies and procedures of a registered clearing agency, similar to how the Exchange believes other exchange-listed equity securities are cleared and settled today. Therefore, BSTX's rules do not impose any burden on competition regarding the manner in which trades may be cleared or settled because market participants would be able to clear and settle security token transactions insubstantially the same manner as they already clear and settle transactions in other types of NMS stock.

With respect to consideration (4) above, the Exchange believes that the proposed one year Pilot pursuant to which non-BSTX Participants that wish to trade security tokens OTC would request a wallet address and agree to report their end-of-day security token balances to BSTX would not impose a burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. As previously noted, market participants would not be limited in their ability to trade security tokens OTC because security tokens could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. The Exchange proposes the Pilot as a means of obtaining sufficient end-of-day security token balance information so that the Exchange can update the Ethereum blockchain as an ancillary recordkeeping mechanism. The Exchange believes that the proposed Pilot would help promote maintaining accurate and complete updates to the Ethereum blockchain as an ancillary recordkeeping mechanism without posing an undue burden on OTC market participants trading security tokens. Participants trading NMS stocks OTC are already subject to immediate transaction reporting obligations and under the proposed Pilot would only have a single, end-of-day reporting obligation (and a one-time obligation to obtain a wallet address). The Exchange does not propose to charge any fees associated with these requirements. In addition the Pilot is proposed to last only one year, during which time the Exchange plans to coordinate with FINRA for FINRA to implement a rule that would provide BSTX with sufficient end-of-day security token balance information from broker-dealers that are not Exchange members to update the Ethereum blockchain as an ancillary recordkeeping mechanism.

Finally, with respect to consideration (5) noted above regarding other exchanges extending unlisted trading privileges to security tokens, the Exchange does not believe that the additional requirements that another exchange would need to adopt to facilitate the ancillary recordkeeping mechanism impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. An exchange is required pursuant to Rule 12f–5 under the Exchange Act to have

[319] 17 CFR 240.19c–1.

[320] 17 CFR 240.19c–3.

rules in effect providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.[321] As described in Item 3, Part II.K, the Exchange believes that in order to extend unlisted trading privileges to security tokens, another exchange would need rules in place that would require their members to obtain a whitelisted wallet address and to report their end-of-day security token balances in some manner so as to facilitate updates to the Ethereum blockchain as an ancillary recordkeeping mechanism. As previously discussed, the Exchange believes that there are numerous ways in which an Exchange could accomplish this, such as by developing its own wallet manager software compatible with the BSTX Security Token Protocol that is capable of updating the blockchain based on end-of-day security token balance information, by coordinating with BSTX, or otherwise. The BSTX Security Token Protocol is based on open source code, and the Exchange is not proposing any requirement that a particular wallet manager or version of wallet manager software be used. Anyone is eligible to serve or operate as a wallet manager provided they are capable of facilitating effective updates to the blockchain to reflect changes in security token ownership. Moreover, Rule 12f–5 under the Exchange Act imposes the burden on exchanges to have in place rules to facilitate transactions in a particular type of security, so it is not the case that the Exchange's proposal imposes this burden. Although extending unlisted trading privileges to security tokens would require another exchange to adopt additional rules as described above, the Exchange believes that this burden is no different, for example, than the burden on an exchange that only trades equities having to first adopt rules to govern options trading prior to offering trading in options.

(C) The Exchange's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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–BOX–2019–19 and should be submitted on or before November 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[322]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22699 Filed 10–17–19; 8:45 am]

BILLING CODE 8011–01–P

[321] 17 CFR 240.12f–5.

[322] 17 CFR 200.30–3(a)(12).

FEDERAL REGISTER

Vol. 84 Friday,

No. 202 October 18, 2019

Part III

Environmental Protection Agency

40 CFR Part 52

Response to Clean Air Act Section 126(b) Petition From New York; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2018–0170; FRL–10000–58–OAR]

RIN 2060–AU04

Response to Clean Air Act Section 126(b) Petition From New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is denying a Clean Air Act (CAA or Act) petition submitted by the State of New York on March 12, 2018. The petition requested that the EPA make a finding that emissions from a group of hundreds of identified sources in nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in Chautauqua County and the New York Metropolitan Area (NYMA) in violation of the good neighbor provision. The EPA is denying the petition because the petitioner, New York, has not demonstrated, and the EPA did not independently find, that the group of identified sources emits or would emit in violation of the good neighbor provision for the 2008 or 2015 ozone NAAQS in Chautauqua County and the NYMA.

DATES: This final action is effective on October 18, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0170. All documents in the docket are listed and publicly available at *http://www.regulations.gov.* Publicly available docket materials are also available in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Please direct questions concerning this final action to Beth W. Palma, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–5432, email at *palma.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this document is organized as follows:

I. General Information
- A. Executive Summary of the EPA's Decision on the CAA Section 126(b) Petition From New York
- B. The CAA Section 126(b) Petition From New York
- C. Summary of the EPA's May 6, 2019, Proposal

II. Background and Legal Authority
- A. Ground-Level Ozone and the Interstate Transport of Ozone
- B. CAA Sections 110 and 126
- C. The EPA's Historical Approach To Addressing Interstate Transport of Ozone Under the Good Neighbor Provision

III. The EPA's Final Response to the CAA Section 126(b) Petition From New York
- A. Reasonableness of Applying the Four-Step Interstate Transport Framework for This Action
- B. The EPA's Standard of Review for This CAA Section 126(b) Petition Regarding the 2008 and 2015 8-Hour Ozone NAAQS
- C. The EPA's Evaluation of Whether the Petition Is Sufficient To Support a CAA Section 126(b) Finding

IV. Determinations Under CAA Section 307(b)(1) and (d)

V. Statutory Authority

I. General Information

A. Executive Summary of the EPA's Decision on the CAA Section 126(b) Petition From New York

In March 2018, the State of New York submitted a petition requesting that the EPA make a finding pursuant to CAA section 126(b) that emissions from approximately 350 facilities in nine states significantly contribute to nonattainment and/or interfere with maintenance of the 2008 and 2015 ozone NAAQS in violation of CAA section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision. On May 6, 2019, the EPA issued a proposal to deny the CAA section 126(b) petition from New York. 84 FR 22787 (May 20, 2019). The Agency solicited comments on the proposal and hosted a public hearing on June 11, 2019, during which four speakers testified. The EPA also received 44 written comments submitted to the docket on the proposed denial. This **Federal Register** notification addresses certain significant comments the Agency received. The EPA addressed the remaining comments in the separate Response to Comments (RTC) document available in the docket for this action.

As described in further detail in this notification, the EPA is finalizing the denial of the CAA section 126(b) petition submitted by the State of New York. Generally, the New York petition (and comments supportive of the EPA granting this petition) suggests that residents of New York are exposed to unhealthy levels of ground-level ozone pollution. The petition identifies approximately 350 electric generating unit (EGU) facilities and non-EGU facilities emitting, or projected to emit, 400 tons per year or more of nitrogen oxides (NO_X) in nine upwind states and requests that the EPA establish permanent and enforceable emissions limitations for the named major NO_X sources at levels designed to prevent them from significantly contributing to nonattainment or interfering with maintenance of the 2008 and 2015 ozone NAAQS in New York State. In crafting this final action, the EPA has considered public comments on its May 6, 2019, proposal to deny this petition.

Consistent with the EPA's proposal and based on the best data and information available to the Agency at this time, the Agency is finalizing its denial of this petition. This denial is based on New York's failure to meet its statutory burden to demonstrate that the group of sources identified in the petition emits or would emit in violation of the good neighbor provision for the 2008 or 2015 ozone NAAQS with respect to either Chautauqua County or the New York-Northern New Jersey-Long Island, New York-New Jersey-Connecticut area (hereafter, the New York metropolitan area or NYMA).

As indicated in the EPA's proposal, the EPA evaluated New York's CAA section 126(b) petition consistent with the same four-step interstate transport framework that the EPA has used in previous regulatory actions addressing regional ozone transport problems. The EPA's denial rests on both the first and third steps of this framework. With respect to the 2008 and 2015 ozone NAAQS in Chautauqua County, the EPA is denying the petition at step 1 of the framework (*i.e.,* whether there will be a downwind air quality problem relative to the relevant NAAQS) based on the conclusion that the petition does not provide sufficient information to indicate that Chautauqua County should be considered a nonattainment or maintenance receptor pursuant to the good neighbor provision. With respect to the 2008 ozone NAAQS in the NYMA, the EPA is also denying the petition at step 1 of the framework based on the conclusion that the

petition does not provide sufficient information to indicate that the NYMA should be considered a nonattainment or maintenance receptor pursuant to the good neighbor provision. Furthermore, the EPA's own independent analysis of available information indicates that there is not currently, nor is there projected to be in 2023, an air quality problem with respect to either NAAQS in Chautauqua County, and that in 2023 there is not projected to be any further air quality problem with respect to the 2008 ozone NAAQS in the NYMA.[1] Thus, for these areas and NAAQS, the EPA has found that the petition has not met its burden at step 1 of the four-step interstate transport framework to demonstrate that the group of identified sources either emits or would emit pollution in violation of the good neighbor provision. With respect to the 2015 ozone NAAQS in the NYMA, the Agency's 2023 modeling shows a relevant downwind air quality problem, and, thus, the EPA is not denying this portion of the petition with respect to step 1.

The EPA is additionally denying the petition as to all areas for the 2008 and 2015 NAAQS at step 3 of the framework (*i.e.,* whether, considering cost and air quality factors, emissions from sources in the named state(s) will significantly contribute to nonattainment or interfere with maintenance of a NAAQS at a receptor in another state). The EPA has found that material elements in the petition's assessment of whether the sources may be further controlled through implementation of cost-effective controls are insufficient and, thus, New York did not meet its step 3 burden to demonstrate that the named sources currently emit or would emit in violation of the good neighbor provision with respect to the relevant ozone NAAQS.[2]

In making this final decision, the EPA reviewed the petition from New York, the public comments received, the relevant statutory authorities and other relevant materials. Accordingly, the EPA denies the CAA section 126(b) petition from New York.

The remainder of this notification is organized as follows: The General Information part of this notification (Section I) continues with a summary of the relevant issues raised in New York's CAA section 126(b) petition and a summary of the EPA's May 6, 2019, proposed action. Section II of this notification provides background material and information regarding the EPA's approach to addressing the interstate transport of ozone under CAA sections 110(a)(2)(D)(i)(I) and 126(b). Section III of this notification discusses the EPA's standard of review for this action and details the bases for the EPA's final action to deny this petition, including responses to significant comments received on the proposal.

B. The CAA Section 126(b) Petition From New York

On March 12, 2018, the State of New York, through the New York State Department of Environmental Conservation (NY DEC), submitted a CAA section 126(b) petition alleging that emissions from a group of specified upwind sources in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone NAAQS in the NYMA and in Chautauqua County in western New York.

The petition contends that, although the Chautauqua County area (*i.e.,* the area in and around Jamestown, New York) was at the time of petition submittal (and is currently) attaining both the 2008 and the 2015 ozone NAAQS, the area may have difficulty maintaining its attainment status in the future. The petition also explains that the NYMA is currently designated nonattainment for the 2008 ozone NAAQS and, at the time New York submitted the petition, the area would likely be designated nonattainment for the 2015 ozone NAAQS.[3] The petition further asserts that all three states in the multistate NYMA (*i.e.,* New York, New Jersey and Connecticut) have surpassed their three-percent-per-year emissions reductions requirements for the 2008 NAAQS; yet certified monitoring data through 2016 and (at the time of the petition submittal) preliminary 2017 data indicate that the area is not attaining the 2008 NAAQS, with one monitor in Connecticut recording a preliminary 2017 design value of 83 parts per billion (ppb).

The New York petition alleges that emissions from numerous, named upwind sources significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 8-hour ozone NAAQS in New York based on two arguments. First, the petition alleges that the EPA's 2017 contribution modeling conducted in support of the EPA's Cross-State Air Pollution Rule (CSAPR) Update[4] shows that the nine states in which these sources are located contribute 1 percent or more of the 2008 8-hour ozone NAAQS (or 0.75 ppb or more) to ozone concentrations in New York. Second, the petition describes a study that allegedly found that air transported into Chautauqua County on the worst air quality days results in maximum daily ozone concentrations that, on average, are within 2 ppb of the 2015 ozone NAAQS and often exceed the standard of 70 ppb.[5]

When identifying what constitutes significant ozone contributions, the petition considers the highest emitting facilities (*i.e.,* EGU and non-EGU facilities emitting, or projected to emit, 400 tons per year or more of NO_X) from the named states and asserts that these facilities are expected to have the

[1] The EPA notes that on September 13, 2019, the D.C. Circuit issued an opinion remanding the Cross State Air Pollution Rule Update (CSAPR Update, 81 FR 74504 (October 26, 2016)) in *Wisconsin* v. *EPA,* No. 16–1406. The court held that the rule is inconsistent with the CAA because it does not fully address upwind states' obligations under the good neighbor provision by the relevant attainment date for downwind areas. Nonetheless, the EPA is subject to a court-ordered deadline to take final action on New York's CAA section 126(b) petition by September 20, 2019. As explained in this notification, the EPA is finalizing its denial of New York's CAA section 126(b) petition, in part, because the petitioner did not meet its burden to demonstrate both that there is a relevant downwind air quality under the good neighbor provision in a relevant future year in either Chautauqua County or the NYMA, and that there are cost-effective emissions reductions available at the named sources. This basis for denial based on Petitioner's failure to meet its burden is independent and severable from any portion of the denial based on the EPA's discretionary evaluation of downwind air quality in New York using the Agency's 2023 modeling data. The EPA may make any necessary or appropriate modifications to this final action subsequently to reflect its understanding of the court's holding in *Wisconsin.*

[2] The EPA solicited comment on whether to also deny the petition because the petitioner did not sufficiently justify that its identification of such a large, undifferentiated number of sources located in numerous upwind states constitutes a ''group of stationary sources'' within the context of CAA section 126(b). Based on the other bases for denial, the EPA does not need to reach the question of whether the petitioners' failed to sufficiently justify its interpretation of a ''group of stationary sources'' but notes that the absence of supporting information for such a determination makes the Agency unlikely to side with petitioners on the information provided.

[3] The EPA had not yet issued final designations at the time the petition was submitted. On April 30, 2018, the EPA designated New York-Northern New Jersey-Long Island, NY–NJ–CT area (NYMA) as a Moderate nonattainment area for the 2015 ozone NAAQS. 83 FR 25776 (June 4, 2018).

[4] 81 FR 74504 (October 26, 2016).

[5] The petition discusses the results of a study titled the ''Dunkirk Monitor Transport Study,'' which presents an analysis of back-trajectories used to single out interstate airflow on ''design days,'' which the petition defines as days considered in the calculation of the design values. The subject days include the 4 days in each year from 2013 to 2017 with the largest daily maximum 8-hour ozone concentrations at the Dunkirk monitoring site in Chautauqua County, New York. The Dunkirk monitoring site is the design value monitoring site in Chautauqua County (*i.e.,* the site with the highest design value in the county).

greatest impact on the ability of the NYMA and Chautauqua County to attain and maintain the 2008 and 2015 NAAQS.[6] The petition uses NY DEC generated air quality modeling data to show single-day, 8-hour average impacts from the group of 400 ton-per-year sources identified in any individual state of up to 6.34 ppb in Chautauqua County and 4.97 ppb in the New York portion of the NYMA nonattainment area.[7] The petition asserts that instances in which the maximum impact from an individual state's total combined 400 ton-per-year sources exceeds 0.75 ppb at a particular monitor indicate significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS. The petition further asserts that impacts above 0.70 ppb indicate significant contribution to nonattainment or interference with maintenance of the 2015 ozone NAAQS. NY DEC used its own independent modeling to support the assertions in their CAA section 126(b) petition because the State ''has significant concerns'' about the assumptions and results of the EPA's recently released 2023 air quality modeling and its applicability to the CAA section 126(b) petition process.[8] The petition takes particular issue with the EPA's expectation that uncontrolled EGUs will greatly reduce their emissions rates in the absence of unit-level enforceable limits and expresses the additional concern that the EPA may have underestimated the ozone concentration results for monitoring sites located near significant water bodies based on the treatment of model cells containing a land/water interface. The petition also asserts that modeling of 2023 is insufficient to support good neighbor state implementation plans (SIPs) and cannot be used to support a review of New York's petition because CAA section 126(c) explicitly states that compliance must be met ''in no case later than three years after the date of [a CAA section 126(b)] finding,'' and 2023 is more than 3 years after the deadline by which the EPA must act on the NY DEC petition.

After asserting that the identified sources within the named upwind states significantly contribute to nonattainment or interfere with maintenance of the 2008 and 2015 ozone NAAQS in New York, the petition further asserts that these named sources can reasonably be retrofitted with control equipment or can operate existing controls more frequently to reduce NO_X emissions. The petition requests that the EPA establish permanent and enforceable emissions limitations for the named sources at levels designed to prevent them from significantly contributing to nonattainment or interfering with maintenance in New York State. Specifically, the petition requests that the named sources be subject to emissions limits consistent with Reasonably Available Control Technology (RACT) as defined by New York State, which bases its presumptive limits and facility-specific control analyses on a standard of $5,000 per ton of NO_X reduced. The petition acknowledges that some of the facilities identified in the petition may already operate with a NO_X emissions rate similar to New York's RACT limits. Nonetheless, the petition asks that the EPA establish enforceable daily emissions limits during the ozone season to require these sources to continue to operate at these rates in the future. The petition claims that enforceable emissions limits would prevent emissions controls from being turned off, which the petition asserts occurs when the sources in the State are collectively emitting well below their seasonal CSAPR budgets. Section III.D of the proposal provides more detail regarding the content of the New York CAA section 126(b) petition.

After receiving New York's CAA section 126(b) petition in March of 2018, and consistent with CAA section 307(d)(10), the EPA determined that the 60-day period for responding to New York's petition was insufficient for the EPA to act on the petition. On May 11, 2018, the EPA published a document extending the deadline for acting on New York's CAA section 126(b) petition to November 9, 2018.[9] That document is in the docket for this rulemaking.

C. Summary of the EPA's May 6, 2019, Proposal

In Section IV of the proposal, the EPA explained its basis for proposing to deny the CAA section 126(b) petition from New York. Given that ozone is a regional pollutant and that the EPA had recently evaluated regional ozone pollution in two recent rulemakings—the CSAPR Update[10] and the Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard[11] (the Determination Rule)—the EPA proposed to evaluate New York's CAA section 126(b) petition consistent with the same four-step interstate transport framework (*see* Section II.C.1 of this action) that the EPA has used in previous regulatory actions to evaluate regional ozone transport problems.

The EPA identified multiple bases for the proposed denial. The EPA noted that the Agency's historical approach to evaluating CAA section 126(b) petitions first looks at whether a petition independently identifies or establishes a technical basis for the requested CAA section 126(b) finding. 84 FR 22797. In this regard, the Agency proposed to find that several aspects of New York's analyses are insufficient to support New York's conclusion that the sources named in the petitions emit or would emit in violation of the good neighbor provision. First, considering step 1 of the four-step interstate transport framework, the EPA proposed to find that New York's petition does not provide sufficient information to demonstrate that there is a current or expected future downwind nonattainment or maintenance problem in Chautauqua County with respect to either the 2008 or the 2015 ozone NAAQS. *Id.* at 22800. Similarly, with respect to the NYMA, the EPA proposed to find, at step 1, that the New York petition does not provide sufficient information to indicate that there will be a future nonattainment or maintenance problem with respect to the 2008 ozone NAAQS. *Id.* at 22800–01. Second, considering step 3 of the four-step interstate transport framework, the EPA proposed to find that material

[6] The petition identifies which facilities emit 400 tons per year of more of NO_X based on 2017 EGU projections by the Mid-Atlantic Regional Air Management Association. The petition also identifies non-EGU sources emitting greater than 400 tons of NO_X in the 2014 National Emissions Inventory.

[7] The petition provides additional detail regarding the modeling methodology. Specifically, the petition notes that NY DEC used version 5.0.2 of the Community Multiscale Air Quality model with the EPA's Weather Research Forecast (WRF) 2011 meteorological data to model hourly ozone concentrations during the period May 18 to July 30 for a 2017 ''baseline'' scenario and additional state-by-state ''control'' modeling scenarios in which emissions from the named sources in a given state were set to zero. The petition explains that NY DEC then used the modeled concentrations to calculate the 8-hour daily maximum average (MDA8) in each grid cell on each day of the modeling period for each modeled scenario. The difference in MDA8 concentrations between the 2017 baseline and each state zero-out run was used to represent the contributions on each day. The NY DEC then selected the largest single-day contribution from among the highest ozone concentration days to support their analysis of contributions relative to a 1-percent-of-the-NAAQS threshold.

[8] *See* the EPA's October 27, 2017 memorandum titled, ''Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' that provided future year ozone design values for monitoring sites in the U.S. based on updated air quality modeling (for 2023) and monitoring data.

[9] 83 FR 21909 (May 11, 2018).

[10] 81 FR 74504 (October 26, 2016).

[11] 83 FR 65878 (December 21, 2018).

elements in New York's analyses are technically deficient, such that the EPA cannot conclude that any source or group of sources in any of the named states will significantly contribute to nonattainment or interfere with maintenance in Chautauqua County or the NYMA relative to the 2008 and 2015 ozone NAAQS. *Id.* at 22802.

The EPA further proposed to rely on its own independent analysis to evaluate the requested CAA section 126(b) findings at step 1 considering available air quality monitoring and modeling data. *Id.* at 22800. The EPA proposed to find that its independent analysis provides no basis to conclude that Chautauqua County will have an air quality problem relative to either the 2008 or the 2015 ozone NAAQS. The EPA explained that the 2015–2017 design value in Chautauqua County is 68 ppb, which is below the level of both the 2008 and 2015 ozone NAAQS.[12] Furthermore, the EPA indicated that it had recently finalized a determination that the Jamestown, New York Marginal nonattainment area (Chautauqua County) has attained the 2008 ozone NAAQS.[13] Additionally, Section IV.B of the proposal explained that the EPA's examination in the Determination Rule of the 2023 projected design values for Chautauqua County indicates that this area is not projected to be in nonattainment or have a maintenance problem in 2023 for the 2008 ozone NAAQS. The EPA's air quality modeling supporting the Determination Rule also indicates that the monitor in Chautauqua County is expected to continue to both attain and maintain the 2015 ozone NAAQS standard in 2023, with an average 2023 design value of 58.5 ppb and a maximum 2023 design value of 60.7 ppb.[14]

The EPA also proposed to find that its independent analysis, conducted to support the Determination Rule, provides no basis to conclude that the NYMA will have a future air quality problem relative to the 2008 ozone NAAQS. The EPA's examination of the 2023 projected design values for the NYMA indicates that this area is not projected to be in nonattainment or have a maintenance problem in 2023 for the 2008 ozone NAAQS. However, the modeling indicates that the NYMA is projected to be in nonattainment in 2023 with respect to the 2015 ozone NAAQS.

As noted previously, considering step 3 of the four-step interstate transport framework, the EPA proposed to find that material elements in New York's analyses are technically deficient, such that the EPA cannot conclude that any source or group of sources in any of the named states will significantly contribute to nonattainment or interfere with maintenance in Chautauqua County or the NYMA relative to the 2008 and 2015 ozone NAAQS. As discussed in Section IV.B of the proposal, the EPA did not independently conduct a regional step 3 analysis for any sources with respect to the 2015 ozone NAAQS because the EPA interprets CAA section 126(b) as placing the burden on the petitioner to establish a technical basis for the specific finding requested, and, unlike the step 1 analysis, the EPA lacked information and analysis on which it could rely for such an independent step 3 analysis.

II. Background and Legal Authority

This section of the notification discusses background and legal authority relevant to this action beginning with an overview of ozone formation and interstate transport in Section II.A. Section II.B of this notification describes the key statutory provisions under both CAA sections 126 and 110(a)(2)(D)(i)(I), including the relationship between the good neighbor provision and CAA section 126(b). Section II.C summarizes the EPA's historical approach to addressing the interstate transport of ozone under the good neighbor provision to include a description of the four-step interstate transport framework and the EPA's prior regional rulemakings.

A. Ground-Level Ozone and the Interstate Transport of Ozone

On March 12, 2008, the EPA promulgated a revision to the ground-level ozone NAAQS, lowering both the primary and secondary standards to 75 ppb.[15] On October 1, 2015, the EPA further revised the ground-level ozone NAAQS to 70 ppb.[16]

As discussed in Section III.A of the proposal, ground-level ozone is not emitted directly into the air but is a secondary air pollutant created by chemical reactions between ozone precursors, chiefly NO_X and non-methane volatile organic compounds (VOCs), in the presence of sunlight. Emissions from mobile sources, EGUs, industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. These precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. Studies have established that ozone formation, atmospheric residence, and transport can occur on a regional scale (*i.e.,* across hundreds of miles) over much of the eastern United States. Thus, in any given location, ozone pollution levels are affected by a combination of local emissions and emissions from upwind sources. Numerous observational studies have demonstrated the transport of ozone and its precursors and the impact of upwind emissions on high concentrations of ozone pollution.[17] For further discussion of ozone-formation chemistry and health effects, *see* the National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). For further discussion of the regional nature of interstate transport of ozone pollution *see* the Determination Rule, 83 FR 65879–80 (December 21, 2018).

B. CAA Sections 110 and 126

CAA sections 126 and 110(a)(2)(D)(i) provide the statutory authority for this action. Section 126(b) of the CAA provides, among other things, that any state or political subdivision may petition the Administrator of the EPA to find that any major source or group of stationary sources in an upwind state emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i), referred to as the good neighbor provision of the Act.[18] Petitions submitted pursuant to this section are commonly referred to as CAA section 126(b) petitions. Similarly, findings by the Administrator, pursuant to this section, that a source or group of

[12] The 2015–2017 design value for Chautauqua County in the ''Jamestown-Dunkirk-Fredonia, NY CBSA'' at AQS site 360130006 is 68 ppb. Available at *https://www.epa.gov/sites/production/files/2018-07/ozone_designvalues_20152017_final_07_24_18.xlsx.*

[13] *See* Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Jamestown, New York Marginal Nonattainment Area, 83 FR 49492 (October 2, 2018).

[14] *See* 2023 design values for AQS site 360130006 in spreadsheet released with the EPA's March 2018 memorandum. Available at *https://www.epa.gov/sites/production/files/2018-05/updated_2023_modeling_dvs_collective_contributions.xlsx.*

[15] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

[16] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

[17] For example, Bergin, M.S. et al. (2007). Regional air quality: local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[18] The text of CAA section 126 as codified in the U.S. Code cross-references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and that Congress instead intended to cross-reference CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

sources emits air pollutants in violation of the CAA section 110(a)(2)(D)(i) prohibition are commonly referred to as CAA section 126(b) findings.

CAA section 126 explains the effect of a CAA section 126(b) finding and establishes the conditions under which continued operation of a source subject to such a finding may be permitted. Specifically, CAA section 126(c) provides that it is a violation of section 126 of the Act and of the applicable SIP: (1) For any major proposed new or modified source subject to a CAA section 126(b) finding to be constructed or operate in violation of the prohibition of CAA section 110(a)(2)(D)(i) or (2) for any major existing source for which such a finding has been made to stay in operation more than 3 months after the date of the finding. The statute, however, also gives the Administrator discretion to permit the continued operation of a source beyond 3 months if the source complies with emissions limitations and compliance schedules provided by the EPA to bring about compliance with the requirements contained in CAA sections 110(a)(2)(D)(i) and 126 as expeditiously as practicable, but in any event no later than 3 years from the date of the finding.

Section 110(a)(2)(D)(i) of the CAA requires states to prohibit certain emissions from in-state sources if such emissions impact the air quality in downwind states. Specifically, CAA sections 110(a)(1) and 110(a)(2)(D)(i)(I) require all states, within 3 years of promulgation of a new or revised NAAQS, to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to that NAAQS. As described further in Section II.C.2, the EPA has developed several regional rulemakings to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the various ozone NAAQS. The EPA's most recent rulemaking, the Determination Rule, finalized a determination that the existing CSAPR Update fully addresses certain states' interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. 83 FR 65878 (December 21, 2018).

Section 110(a)(2)(D)(ii) of the CAA further requires SIPs to contain adequate provisions ensuring compliance with the applicable requirements of, *inter alia,* CAA section 126. Thus, where the EPA has made a finding pursuant to CAA section 126(b), this provision requires states to revise their SIPs to adopt any emissions limitations and compliance schedules provided by the EPA under CAA section 126(c).

C. The EPA's Historical Approach To Addressing Interstate Transport of Ozone Under the Good Neighbor Provision

Given that formation, atmospheric residence, and transport of ozone can occur on a regional scale (*i.e.,* across hundreds of miles) and that many separate areas across the eastern U.S. have struggled to attain and maintain the NAAQS, the EPA has historically addressed the interstate transport of ozone pursuant to the good neighbor provision by promulgating rulemakings that addressed significant contribution and interference with maintenance through regional trading programs to reduce NO_X emissions. Each of these rulemakings followed a similar four-step interstate transport framework to evaluate and address the extent of the ozone transport problem (*i.e.,* the breadth of downwind ozone problems and the contributions from upwind states) and, ultimately, to find that downwind states' problems attaining and maintaining the ozone NAAQS result from an interconnected system of transported pollution emitted by multiple upwind sources located in different upwind states combined with downwind (*i.e.,* locally generated) ozone.

1. Description of the Four-Step Interstate Transport Framework

Through the development and implementation of several previous rulemakings,[19] the EPA established the following four-step interstate transport framework to address the requirements of the good neighbor provision for regional pollutants such as ozone and fine particulate matter ($PM_{2.5}$):

(1) *Identify downwind receptors that are expected to have problems attaining or maintaining the NAAQS.* The EPA historically identified downwind areas with air quality problems, referred to as receptors, using air quality modeling projections for a future analytic year and, where appropriate, considering monitored air quality data.

(2) *Determine which upwind states are linked to these identified downwind air quality problems and thus warrant further analysis to determine whether their emissions violate the good neighbor provision.* In the EPA's most recent transport rulemakings for the 1997 and 2008 ozone NAAQS, as well as the 1997 and 2006 $PM_{2.5}$ NAAQS, the Agency identified such upwind states to be those modeled to contribute at or above an air quality threshold relative to the applicable NAAQS.

(3) *For states linked to downwind air quality problems, identify upwind emissions (if any) on a statewide basis that will significantly contribute to nonattainment or interfere with maintenance of a standard at a receptor in another state.* In the EPA's prior rulemakings for ozone and $PM_{2.5}$, the Agency identified and apportioned emissions reduction responsibility among multiple upwind states linked to downwind air quality problems by identifying a uniform level of control stringency for certain sources in the state based on cost and air quality factors evaluated in a multi-factor test.

(4) *For upwind states that are found to have emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implement the necessary emissions reductions within the state.* When the EPA has promulgated federal implementation plans (FIPs) addressing the good neighbor provision for ozone and $PM_{2.5}$ NAAQS in prior transport rulemakings, the EPA has typically required affected sources in upwind states to participate in allowance trading programs to achieve the necessary emissions reductions.[20] In addition, the EPA has also offered states the opportunity to participate in comparable EPA-operated allowance trading programs to achieve the necessary emissions reductions through SIPs.

Using the four-step framework to evaluate a particular interstate transport problem allows the EPA to determine whether upwind states actually contribute to a downwind air quality problem, whether and which sources can be cost-effectively controlled to address that downwind air quality

[19] *See* Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (also known as the NO_X SIP Call), 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR) Final Rule, 70 FR 25162 (May 12, 2005); CSAPR Final Rule, 76 FR 48208 (August 8, 2011); CSAPR Update Final Rule, 81 FR 74504 (October 26, 2016); Determination Rule, 83 FR 65878 (December 21, 2018).

[20] While the EPA has chosen to implement emissions reductions through allowance trading programs for states found to have a downwind impact, upwind states can choose to submit a SIP that implements such reductions through other enforceable mechanisms that meet the requirements of the good neighbor provision, such as the enforceable mechanisms that the petitioner apparently favors in its petition.

problem, what level of emissions should be eliminated to address the downwind air quality problem (and thus should be considered ''significant''), and the means of implementing corresponding emissions limits (*i.e.,* source-specific rates or statewide emissions budgets in a limited regional allowance trading program). The outcome of this assessment varies based on the scope of the air quality problem, the availability and cost of controls at sources in upwind states, and the estimated impact of upwind emissions reductions on downwind ozone concentrations.

2. Prior Regional Rulemakings Under the Good Neighbor Provision

The EPA's first regional interstate transport rulemaking, the NO_X SIP Call, addressed the 1979 ozone NAAQS. 63 FR 57356 (October 27, 1998).[21] The NO_X SIP Call was the result of the analytic work and recommendations of the Ozone Transport Assessment Group, which was organized and led by states in consultation with the EPA and other stakeholders. The EPA used this collaboratively developed analysis to conclude in the NO_X SIP Call that ''[t]he fact that virtually every nonattainment problem is caused by numerous sources over a wide geographic area is a factor suggesting that the solution to the problem is the implementation over a wide area of controls on many sources, each of which may have a small or unmeasurable ambient impact by itself.'' 63 FR 57356, 57377 (October 27, 1998). The NO_X SIP Call promulgated statewide emissions budgets and required upwind states to adopt SIPs that would decrease their NO_X emissions to meet these budgets, thereby prohibiting the emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in downwind states. The EPA also promulgated a model rule for a regional allowance trading program called the NO_X Budget Trading Program that states could adopt in their SIPs as a mechanism to achieve some or all required emissions reductions. All jurisdictions covered by the NO_X SIP Call ultimately chose to adopt the NO_X Budget Trading Program into their SIPs. The NO_X SIP Call was upheld by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in all pertinent respects. *See Michigan* v. *EPA,* 213 F.3d 663 (2000).

In coordination with the NO_X SIP Call rulemaking under CAA section 110(a)(2)(D)(i)(I), the EPA also addressed several pending CAA section 126(b) petitions submitted by eight northeastern states regarding the same air quality issues addressed by the NO_X SIP Call, specifically interstate ozone transport for the 1979 ozone NAAQS. These CAA section 126(b) petitions asked the EPA to find that ozone precursor emissions from numerous sources located in 30 states and the District of Columbia had adverse air quality impacts on the petitioning downwind states. Half of the petitioning states (*i.e.,* Connecticut, Maine, New York, and Pennsylvania) requested an allowance trading program to reduce NO_X emissions and remedy regional interstate ozone transport. 63 FR 56297 (October 21, 1998). Based on analysis conducted for the NO_X SIP Call regarding upwind state impacts on downwind air quality, the EPA, in May 1999, made technical determinations regarding the claims in the petitions, but did not at that time make the CAA section 126(b) findings requested by the petitions. 64 FR 28250 (May 25, 1999). In making these technical determinations, the EPA concluded that the NO_X SIP Call would fully address and remediate the claims raised in these petitions and that the EPA would, therefore, not need to take separate action to remedy any potential violations of the CAA section 110(a)(2)(D)(i) prohibition. 64 FR 28252. However, subsequent litigation resulted in a judicial stay of the NO_X SIP Call and led the EPA to ''de-link'' the CAA section 126(b) petition response from the NO_X SIP Call. The EPA made final CAA section 126(b) findings for 12 states named in the petitions and the District of Columbia. The EPA found that sources in these states emitted in violation of the prohibition in the good neighbor provision with respect to the 1979 ozone NAAQS based on the affirmative technical determinations made in the May 1999 rulemaking. To remedy the violation under CAA section 126(c), the EPA required affected sources in the upwind states to participate in a regional allowance trading program whose requirements were designed to be interchangeable with the requirements of the optional NO_X Budget Trading Program model rule provided under the NO_X SIP Call. 65 FR 2674 (January 18, 2000). The EPA's action on these CAA section 126(b) petitions was upheld by the D.C. Circuit. *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032 (D.C. Cir. 2001).

The EPA next promulgated the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005), to address interstate transport under the good neighbor provision with respect to the 1997 ozone NAAQS, as well as the 1997 $PM_{2.5}$ NAAQS. 70 FR 25172. The EPA adopted the same approach for quantifying the level of states' significant contribution to downwind nonattainment in CAIR as it used in the NO_X SIP Call, based on the determination in the NO_X SIP Call that downwind ozone nonattainment is due to the impact of emissions from numerous upwind sources and states. 70 FR 25162, 25172 (May 12, 2005). The EPA explained that ''[t]ypically, two or more States contribute transported pollution to a single downwind area, so that the 'collective contribution' is much larger than the contribution of any single State.'' 70 FR 25186. CAIR included two distinct regulatory processes: (1) A rulemaking to define significant contribution (*i.e.,* the emissions reduction obligation) under the good neighbor provision and provide for submission of SIPs eliminating that contribution, 70 FR 25162 (May 12, 2005); and (2) a rulemaking to promulgate, where necessary, FIPs imposing emissions limitations in the event states did not submit SIPs. 71 FR 25328 (April 28, 2006). The FIPs required EGUs in affected states to participate in regional allowance trading programs, which replaced the previous NO_X Budget Trading Program.

In conjunction with the second CAIR rulemaking, which promulgated backstop FIPs, the EPA acted on a CAA section 126(b) petition received from the State of North Carolina on March 19, 2004, seeking a finding that large EGUs located in 13 states were significantly contributing to nonattainment and/or interfering with maintenance of the 1997 ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS in North Carolina. Citing the analyses conducted to support the promulgation of CAIR, the EPA denied North Carolina's CAA section 126(b) petition in full based on determinations either that the named states were not adversely impacting downwind air quality in violation of the good neighbor provision, or that such impacts were fully remedied by implementation of the emissions reductions required by the CAIR FIPs. 71 FR 25328, 25330 (April 28, 2006).

The D.C. Circuit found that the EPA's approach to CAA section 110(a)(2)(D)(i)(I) in CAIR was ''fundamentally flawed'' in several

[21] As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but the EPA subsequently stayed the rule's provisions with respect to that standard. 65 FR 56245 (September 18, 2000). The EPA recently finalized an action rescinding the findings of good neighbor obligations with respect to the 1997 ozone NAAQS as a basis for the NO_X SIP Call. 84 FR 8422 (March 8, 2019).

respects, and the rule was remanded in July 2008 with the instruction that the EPA replace the rule ''from the ground up.'' *North Carolina* v. *EPA,* 531 F.3d 896, 929 (D.C. Cir.), modified on reh'g, 550 F.3d 1176 (D.C. Cir. 2008). The decision concluded the EPA's analysis and compliance mechanisms did not address all elements required by the statute. The EPA's separate action denying North Carolina's CAA section 126(b) petition was not challenged.

On August 8, 2011, the EPA promulgated CSAPR to replace CAIR. 76 FR 48208 (August 8, 2011). CSAPR addressed the same (1997) ozone and $PM_{2.5}$ NAAQS as CAIR and additionally addressed interstate transport for the 2006 $PM_{2.5}$ NAAQS by requiring 28 states to reduce sulfur dioxide (SO_2) emissions, annual NO_X emissions, and/or ozone season NO_X emissions that would significantly contribute to other states' nonattainment or interfere with other states' ability to maintain these air quality standards. Consistent with prior determinations made in the NO_X SIP Call and CAIR, the EPA again found that emissions from sources in multiple upwind states contributed to ozone nonattainment in multiple downwind states. Specifically, the EPA found ''that the total 'collective contribution' from upwind sources represents a large portion of $PM_{2.5}$ and ozone at downwind locations and that the total amount of transport is composed of the individual contribution from numerous upwind states.'' 76 FR 48237. Accordingly, the EPA conducted a regional analysis, calculated emissions budgets for affected states, and required EGUs in these states to participate in new regional allowance trading programs to reduce statewide emissions levels.[22] CSAPR was subject to nearly 4 years of litigation. Ultimately, the Supreme Court upheld the EPA's approach to calculating emissions reduction obligations and apportioning upwind state responsibility under the good neighbor provision, but also held that the EPA was precluded from requiring more emissions reductions than necessary to address downwind air quality problems, or ''over-controlling'' upwind state emissions. *See EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 521–22 (2014) (*EME Homer City*).[23]

In 2016, the EPA promulgated the CSAPR Update to address the good neighbor provision requirements for the 2008 ozone NAAQS. 81 FR 74504 (October 26, 2016). The CSAPR Update built upon previous regulatory efforts to address the collective contributions of ozone pollution from 22 states in the eastern U.S. to widespread downwind air quality problems. As with previous rulemakings, the EPA evaluated the nature (*i.e.,* breadth and interconnectedness) of the ozone problem and NO_X reduction potential from EGUs, including essentially all the EGUs at the facilities named in the New York CAA section 126(b) petition.[24] In the CSAPR Update, the EPA quantified emissions reduction obligations for each state based on an analysis of control strategies that could be implemented by the upcoming 2017 ozone season, which coincided with the (then) upcoming 2018 Moderate area attainment date. The EPA implemented those emissions reductions through FIPs which required EGUs in affected states to participate in a regional allowance trading program to further reduce statewide NO_X emissions levels. The CSAPR Update is subject to pending legal challenges in the D.C. Circuit. *Wisconsin* v. *EPA,* No. 16–1406 (D.C. Cir. argued October 3, 2018).

At the time the EPA finalized the CSAPR Update in 2016, the EPA was unable to determine whether the rule fully resolved good neighbor obligations with respect to the 2008 ozone NAAQS for most (*i.e.,* 21) of the States subject to that action, including those addressed in New York's petition (*i.e.,* Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia). The EPA stated that, based on its analysis of 2017 air quality at that time, the emissions reductions required by the rule ''may not be all that is needed'' to address transported emissions.[25] 81 FR 74521–22 (October 26, 2016). The information available at that time suggested that downwind air quality problems would remain in 2017 after implementation of the CSAPR Update and that upwind states continued to be linked to those downwind problems at or above the 1 percent threshold used at step 2 of the EPA's analysis. However, in the CSAPR Update, the EPA could not determine whether, in step 3 of the four-step interstate transport framework, the EPA had quantified all emissions reductions that may be considered cost-effective because the rule did not evaluate non-EGU ozone season NO_X reductions or further EGU control strategies (*i.e.,* the implementation of new post-combustion controls) that may be achievable on timeframes extending beyond the 2017 analytic year used in the EPA's analysis. The Agency recognized that completing such an analysis could extend the timeframe for action and prioritized the substantial short-term emissions reductions achievable for the 2017 ozone season. *See* 81 FR 74521 for additional details.

On December 6, 2018, the EPA finalized a determination that, based on the latest available emissions inventory and air quality modeling data for a 2023 analytic year, the CSAPR Update fully addresses the good neighbor provision requirements for the 2008 ozone NAAQS for 20 eastern states (among the 22) previously addressed in the CSAPR Update. 83 FR 65878 (December 21, 2018). The EPA's Determination Rule applied the four-step interstate transport framework but did not move beyond an analysis at step 1, because the EPA found that there would be no remaining nonattainment or maintenance receptors for the 2008 ozone NAAQS in the eastern U.S. in 2023. Therefore, with the CSAPR Update fully implemented, the EPA finalized in the Determination Rule a finding that the 20 states addressed by that action (including eight of the nine states named in New York's petition) will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state regarding the 2008 ozone NAAQS. The EPA had already determined that the remaining two states would have no remaining good neighbor obligation for the 2008 ozone NAAQS—one in the CSAPR Update (Tennessee), 81 FR 74540 (October 26, 2016), and the other in a separate SIP approval (Kentucky,

[22] The CSAPR trading programs included assurance provisions to ensure that emissions are reduced within each individual state, in accordance with *North Carolina,* 531 F.3d at 907–08 (holding the EPA must require elimination of emissions from each upwind state that contribute significantly to nonattainment and interfere with maintenance in downwind areas). Those provisions were also included in the CSAPR Update and took effect with the 2017 CSAPR compliance periods.

[23] On remand from the Supreme Court, the D.C. Circuit further affirmed various aspects of the CSAPR, while remanding the rule without vacatur for reconsideration of certain states' emissions budgets where it found those budgets may over-control emissions beyond what was necessary to address the good neighbor requirements. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). The EPA addressed the remand in several rulemaking actions in 2016 and 2017.

[24] The EPA uses the language ''*essentially all* the EGUs at the facilities named . . . .'' (emphasis added) to clarify that the New York petition identifies sources at the facility, rather than at the unit, level. The CSAPR Update looked at unit-level data and included all fossil-fuel-fired boiler or combustion turbine EGUs with a capacity (electrical output) greater than 25 megawatts (MW). *See* 81 FR 74563 (October 26, 2016).

[25] The EPA determined that the emissions reductions required by the CSAPR Update satisfied the full scope of the good neighbor obligation for Tennessee with respect to the 2008 ozone NAAQS. 81 FR 74551–52 (October 26, 2016).

the ninth state named in New York's petition), 83 FR 33730 (July 17, 2018), that relied on the same air quality modeling used in the Determination Rule. The Determination Rule is subject to pending legal challenges in the D.C. Circuit. *New York* v. *EPA,* No. 19–1019 (D.C. Cir.).

Most recently, the EPA acted on six CAA section 126(b) petitions pertaining to the 2008 and 2015 ozone NAAQS submitted by the States of Connecticut, Delaware, and Maryland regarding various sources in five upwind states. In denying the petitions, the EPA applied the same four-step interstate transport framework used in prior rulemakings and relied on analysis and determinations made in the CSAPR Update for purposes of evaluating the good neighbor obligations with respect to the 2008 ozone NAAQS. 83 FR 16064 (April 13, 2018) (Connecticut) 83 FR 50444 (October 5, 2018) (Delaware and Maryland).[26] The EPA found that the downwind areas were not projected to have problems attaining or maintaining the NAAQS (step 1) and/or that the petition failed to identify cost-effective emissions reductions for the affected sources (step 3), particularly where enforceable emissions limits had already been implemented for certain sources in the form of state-wide emissions budgets and, thus, the EPA already had addressed their significant contribution or interference with maintenance for those sources.

III. The EPA's Final Response to the CAA Section 126(b) Petition From New York

The EPA is finalizing a denial of the CAA section 126(b) petition from New York. Section III.A of this notification describes the reasonableness of applying the four-step interstate transport framework as the standard of review in evaluating New York's CAA section 126(b) petition. Section III.B discusses the EPA's general standard of review of CAA section 126(b) petitions. Section III.C describes the EPA's determination that New York has not demonstrated that the sources named in its petition emit or would emit in violation of the good neighbor provision such that they will significantly contribute to nonattainment or interfere with maintenance of the 2008 or 2015 ozone NAAQS in New York. Where the EPA has currently available information to inform an independent analysis of New York's petition, we also present this information in Section III.C. In Section III, generally, and in the RTC document included in the docket for this action, the Agency explains the rationale supporting its final action and provides its response to significant public comments on the proposed action.

A. Reasonableness of Applying the Four-Step Interstate Transport Framework for This Action

As discussed in Section II.C of this notification, the EPA has consistently analyzed ozone transport with the understanding that nonattainment and maintenance concerns result from the cumulative air quality impacts of contributions from numerous anthropogenic sources across several upwind states (as well as from within the downwind state). Consistent with this understanding, the EPA has historically evaluated ozone transport based, in part, on the relative contribution of all anthropogenic sources within a state, as measured against a screening threshold, and then identified particular source sectors and units for regulatory consideration.[27] This approach to evaluating ozone transport is reasonable because the statute's use of ''significantly'' as a modifier to ''contribute'' implies a relationship (*e.g.,* the impact a source or collection of sources has relative to other relevant sources of that pollutant). Therefore, although CAA section 126(b) allows downwind states to petition the EPA regarding specific sources or groups of sources that they believe are contributing to the downwind air quality problems, the EPA believes it is reasonable and appropriate to evaluate the emissions from sources named in a CAA section 126(b) petition in the context of all relevant anthropogenic sources of that pollutant to determine whether emissions from the named sources violate the good neighbor provision. In this way, the EPA can evaluate whether the petitioner has appropriately identified the source or group of sources that should be regulated.

The EPA notes that the four-step framework provides a logical, consistent and systematic approach for addressing interstate transport for a variety of criteria pollutants under a broad array of national, regional and local scenarios. Consequently, the EPA finds it reasonable to apply the same four-step interstate transport framework used to evaluate regional ozone transport under the good neighbor provision in considering a CAA section 126(b) petition addressing the impacts of individual sources on downwind attainment and maintenance of the ozone NAAQS. As the four-step interstate transport framework is applied to evaluate a particular interstate transport problem, the EPA can determine whether upwind sources are actually contributing to a downwind air quality problem; whether and which sources can be cost effectively controlled relative to that downwind air quality problem; what level of emissions should be eliminated to address the downwind air quality problem and the means of implementing corresponding emissions limits (*i.e.,* source-specific rates, or statewide emissions budgets in a limited regional allowance trading program). The outcome of this assessment will vary based on the scope of the air quality problem, the availably and cost of controls at sources in upwind states and the relative impact of upwind emissions reductions on downwind ozone concentrations.

The complexity of atmospheric chemistry and nature of ozone transport also demonstrate the appropriateness of applying the four-step interstate transport framework in considering a CAA section 126(b) petition. As a result of this complexity, including domestic and international as well as anthropogenic and background contributions to ozone and its precursors, it is less likely that a single source is entirely responsible for impacts to a downwind area. Thus, a determination regarding whether this impact is sufficient to significantly contribute to nonattainment or interfere with maintenance of the NAAQS—in light of other anthropogenic emissions sources impacting a downwind area—is necessarily more complicated. The EPA therefore evaluates within step 3 of the framework whether upwind sources have emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS based on various control, cost and air quality factors, including the magnitude of emissions from upwind states, the amount of potential emissions reductions from upwind sources, the cost of those potential emissions reductions, and the potential air quality impacts of emissions reductions.[28] The

[26] The EPA's denial of the Delaware and Maryland petitions is subject to pending legal challenges in the D.C. Circuit. *Maryland* v. *EPA,* No. 18–1285 (D.C. Cir. filed October 15, 2018).

[27] The EPA has used cost as a factor in its multi-factor approach for quantifying significant contribution from multiple contributing states. Cost is used in a relative (*i.e.,* least-cost abatement) approach that also requires examining individual source impact and reduction potential in the context of the larger universe of contributors.

[28] ''We believe it is important to consider both [cost and air quality] factors because circumstances related to different downwind receptors can vary and consideration of multiple factors can help EPA appropriately identify each state's significant

Continued

EPA believes it is reasonable to consider these factors whether evaluating ozone transport in the context of a good neighbor SIP under CAA section 110 or a CAA section 126(b) petition.

For any analysis of a CAA section 126(b) petition regarding interstate transport of ozone, a regional pollutant with contribution from a variety of sources, the EPA reviews whether the particular sources identified by the petitioner should be controlled in light of the collective impact of emissions on air quality in the area, including emissions from other anthropogenic sources. Thus, review of the named sources in New York's petition provides a starting point for the EPA's evaluation, but does not—as the commenters suggest—complete the evaluation to determine whether the named sources emit or would emit in violation of the good neighbor provision.

Several commenters assert that the EPA incorrectly applied the four-step interstate transport framework used to address CAA section 110(a)(2)(D)(i)(I) to the separate provision under CAA section 126(b). Specifically, one commenter states that the four-step interstate transport framework aligns with the planning requirements under CAA section 110(a)(2)(D)(i)(I) because it allows contribution to be apportioned by state boundaries particularly at step 2, which considers whether an upwind state is linked to the downwind air quality problem above an identified air quality threshold. The commenter explains that applying such a threshold allows the collective ''significant contribution'' from a group of sources located in multiple upwind states to be apportioned into ''non-significant contributions'' according to state boundaries. The commenter continues by stating that the provisions in CAA section 126 apply to source emissions regardless of state boundaries, thereby better reflecting the science of air pollution transport and allowing a state to petition for, were the EPA to grant the petition, the application of emissions reductions requirements to a group of stationary sources located in multiple upwind states.

A second commenter notes that the EPA's use of the four-step interstate transport within CAA section 126(b) does not facilitate the application of the CAA section 126(b) petition mechanism as intended, which the commenter articulates as including the use of such petitions and the EPA's action thereupon as a precise tool to control specific sources (*e.g.,* EGUs), potentially through the imposition of emissions limits including shorter averaging times. The commenter notes that the good neighbor provision, as the EPA has historically implemented it, relies on regional trading programs and robust emissions allowance pools, which do not guarantee control of emissions from nearby, upwind sources on high electric demand days that are most conducive to downwind ozone formulation.

The EPA disagrees with commenters who assert that its application of the four-step interstate transport framework used to address requirements under the good neighbor provision is not appropriate to address CAA section 126(b) petitions. While either CAA section 126(b) or CAA section 110(a)(2)(D)(i)(I) may be applied to address interstate transport, as discussed in Section III.B, the cross-reference in CAA section 126(b) to the prohibition in CAA section 110(a)(2)(D)(i) means that the same substantive standard is used to determine whether there is a violation under either section and, therefore, whether emissions should be prohibited in either a good neighbor SIP or in a finding under CAA section 126(b). Moreover, the EPA also believes its use of the four-step interstate transport framework to evaluate a CAA section 126(b) petition continues to be technically justified, especially as it applies to New York's petition addressing the impacts of hundreds of sources to alleged ozone nonattainment downwind.

As discussed earlier, the EPA agrees with commenters that ozone nonattainment problems result from the cumulative air quality impacts of relatively smaller contributions from numerous anthropogenic sources across several upwind states (as well as from within the downwind state). Thus, evaluating which upwind states and sources should be held responsible for addressing downwind nonattainment presents a ''thorny causation problem.'' *EME Homer City,* 572 U.S. at 514. This is true whether the EPA is evaluating the problem in the context of reviewing a SIP or promulgating a FIP under CAA section 110(a)(2)(D)(i)(I) or in the context of evaluating a petition targeting individual sources under CAA section 126(b). The four-step interstate transport framework provides a reasonable approach to identifying which upwind states and sources among many should bear the responsibility for implementing emissions reductions to benefit downwind air quality.

Thus, the EPA disagrees with commenters asserting that application of a statewide air quality threshold at step 2 is inappropriate under CAA section 126(b). First, as discussed further in Section III.C of this notification, while the EPA is not taking a position regarding what air quality threshold is most appropriately applied with respect to the 2015 ozone NAAQS, the EPA agrees that its modeling shows that upwind states named in the petition are all linked to a projected air quality problem in the NYMA using the 1 percent threshold that the EPA has used in other recent rulemakings to evaluate step 2 linkages. Accordingly, although the EPA is not here deciding whether the 1 percent threshold is the only appropriate screening level that might be applied for good neighbor analysis for the 2015 ozone NAAQS in other contexts (such as the EPA's review of SIP submissions [29] addressing 2015 ozone NAAQS good neighbor obligations), the EPA has not proposed to deny the petition on the basis of any analysis at step 2, and the commenter's concern that the use of any statewide air quality threshold is ill-suited to a CAA section 126(b) petition is not raised in this action.

The EPA further notes that both New York's petition and the commenters conflate the EPA's use of an air quality threshold at step 2 with the full analysis used under the four-step interstate transport framework as a whole for apportioning responsibility for emissions reductions among upwind states and sources. New York's CAA section 126(b) petition uses a 1 percent threshold to identify states that are linked to the downwind air quality problems and asserts that all the emissions from the named sources that collectively exceed 1 percent are deemed significant. However, this

contribution under different circumstances . . . . Using both air quality and cost factors allows EPA to consider the full range of circumstances and state-specific factors that affect the relationship between upwind emissions and downwind nonattainment and maintenance problems. For example, considering cost takes into account the extent to which existing plants are already controlled as well as the potential for, and relative difficulty of, additional emissions reductions. Therefore, EPA believes that it is appropriate to consider both cost and air quality metrics when quantifying each state's significant contribution.'' Proposed Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 75 FR 45210, 45271 (August 2, 2010) (CSAPR proposal) (describing potential disparities between upwind and downwind state contributions to identified air quality problems and between levels of controls between states).

[29] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards (August 2018) (providing analysis to support potential use of a 1 ppb threshold in the development of good neighbor SIPs for the 2015 ozone NAAQS). Available at *https://www.epa.gov/sites/production/files/2018-09/documents/contrib_thresholds_transport_sip_subm_2015_ozone_memo_08_31_18.pdf.*

misunderstands the EPA's use of the air quality threshold in the context of the four-step interstate transport framework. If an upwind state's air quality impact to an identified downwind air quality problem exceeds the threshold as determined at step 2, the EPA then turns to the evaluation of additional cost and air quality factors at step 3 to determine what amount of emissions, if any, from an upwind state should be considered to *significantly* contribute to the downwind air quality problems. If the collective air quality contribution does not exceed the threshold, then emissions from within the state are considered not to significantly contribute to the downwind air quality problem. Thus, the EPA reasonably uses an air quality threshold at step 2 of the four-step interstate transport framework as one aspect of the resolution of the ''thorny causation'' problem by identifying which states' collective impact is sufficiently large to merit further review of the emissions reduction potential at sources within the state. As the cumulative nature of the ozone problem remains the same whether evaluated under CAA section 110(a)(2)(D)(i)(I) or section 126(b), the EPA believes that it is reasonable to apply a statewide air quality threshold in this case as in the four-step interstate transport framework that it has historically used to implement the good neighbor provision.

The EPA also disagrees that its use of the four-step interstate transport framework precludes the targeted, source-specific remedy provided for by CAA section 126(c). Although the EPA has used regional trading programs to address good neighbor obligations in past rulemakings under both CAA section 110(a)(2)(D)(i)(I) and CAA section 126(b), the application of the framework does not dictate that the remedy at step 4 necessarily be implemented in a particular manner. Thus, the four-step interstate transport framework can be applied in the context of CAA section 126(b) to determine whether a source is operating in violation of the good neighbor provision with sufficient flexibility to permit the application of an appropriately demonstrated remedy under CAA section 126(c), whether through a regional trading program or source-specific emissions limits.

B. The EPA's Standard of Review for This CAA Section 126(b) Petition Regarding the 2008 and 2015 8-Hour Ozone NAAQS

As discussed in Section II.B of this action, section 126(b) of the CAA provides a mechanism for states and other political subdivisions to seek abatement of pollution in other states that may be affecting their air quality. CAA section 126(b) does not, however, identify a specific methodology or specific criteria for the Administrator to apply when making a CAA section 126(b) finding or denying a petition. Therefore, the EPA has the discretion to identify relevant criteria and develop a reasonable approach for evaluating a CAA section 126(b) petition. *See, e.g., Chevron, U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 842–43 (1984); *Smiley* v. *Citibank,* 517 U.S. 735, 744–45 (1996).

With respect to the statutory requirements of section 126 and section 110(a)(2)(D)(i) of the CAA, the EPA has consistently acknowledged that Congress created these provisions as two independent statutory tools to address the problem of interstate pollution transport. *See, e.g.,* 76 FR 69052, 69054 (November 7, 2011).[30] The fact that Congress did not indicate any preference for one over the other suggests that either tool could serve as a legitimate means to produce the desired result, which is to mitigate significant contribution to nonattainment and interference with maintenance of the NAAQS in downwind states. While the provisions in CAA section 110(a)(2)(D)(i) and section 126 are independent, they are also closely linked. A violation of the prohibition in CAA section 110(a)(2)(D)(i) is a condition precedent for action under CAA section 126(b) and, accordingly, both provisions are reasonably interpreted to construe significant contribution to nonattainment and interference with maintenance identically, since the identical terms are naturally interpreted as meaning the same thing in the two linked provisions. *See Appalachian Power,* 249 F. 3d at 1049–50.

Thus, in addressing a CAA section 126(b) petition for ozone transport, the EPA believes it is appropriate to interpret the ambiguous terms incorporated by the cross-reference to CAA section 110(a)(2)(D)(i) (*i.e.,* ''contribute significantly to nonattainment'' and ''interfere with maintenance'')[31] consistent with the EPA's past approach to evaluating interstate ozone pollution transport under the good neighbor provision, and its interpretation and application of that related provision of the statute. As previously discussed, ozone is a regional air pollutant and the EPA's previous analyses and regulatory actions have evaluated the regional interstate ozone transport problem using the four-step interstate transport framework. The EPA most recently applied this four-step interstate transport framework in promulgating the CSAPR Update and the Determination Rule to address interstate transport with respect to the 2008 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I). This approach is particularly applicable with respect to New York's claims regarding the 2008 ozone NAAQS because both rulemakings address projected air quality problems in New York and the impacts of upwind states, including those named in the petition, on such areas.[32] Given the specific cross-reference in CAA section 126(b) to the substantive prohibition in CAA section 110(a)(2)(D)(i), the EPA believes any prior findings made under the good neighbor provision are informative—if not determinative—for a CAA section 126(b) action. Therefore, in this instance, the EPA's decision whether to grant or deny the CAA section 126(b) petition regarding the 2008 8-hour ozone NAAQS depends on application of the four-step interstate transport framework.

While the EPA previously applied the four-step interstate transport framework and interpreted significant contribution and interference with maintenance under CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS via the CSAPR Update and the Determination Rule, the EPA has not engaged in a regional rulemaking action to apply the good neighbor provision for the 2015 ozone NAAQS. However, the EPA has released technical information intended to inform states' development of SIPs to address the 2015 ozone standard.[33] This information included the results of air quality modeling to identify potential downwind air quality problems in 2023, which we discuss in more detail in

[30] Courts have also upheld the EPA's position that CAA sections 110(a)(2)(D)(i) and section 126 are two independent statutory tools to address the same problem of interstate transport. *See GenOn REMA, LLC* v. *EPA,* 722 F.3d 513, 520–23 (3d Cir. 2013); *Appalachian Power,* 249 F.3d at 1047.

[31] The Supreme Court confirmed that these terms are ambiguous in *EME Homer City* and that the EPA is therefore delegated the authority to reasonably interpret the provisions. 572 U.S. at 514–15 n.18.

[32] The EPA similarly evaluated the impact of Kentucky on New York's air quality after implementation of the CSAPR Update in approving the former state's SIP submission and concluded Kentucky's good neighbor obligations for the 2008 ozone NAAQS were fully addressed by the CSAPR Update. 83 FR 33730 (July 17, 2018). No legal challenges to the EPA's determinations in that SIP action were filed within the period for judicial review.

[33] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (March 27, 2018).

Section III.C.1 of this document. As part of the memorandum releasing the technical information, the EPA acknowledged that states have the flexibility to pursue approaches that may differ from the EPA's historical approach to evaluating interstate transport in developing their good neighbor SIPs.[34] Nonetheless, the EPA's technical analysis and the potential flexibilities identified in the memorandum generally followed the basic elements of the EPA's historical four-step interstate transport framework. As described previously, CAA section 126(b) does not identify a specific methodology or specific criteria for the Administrator to apply when making a CAA section 126(b) finding or denying a petition. Thus, given the EPA's discretion to identify relevant criteria and develop a reasonable approach to inform a CAA section 126(b) finding, the EPA believes that it continues to be appropriate for the Agency to evaluate the claims regarding the 2015 ozone NAAQS in New York's CAA section 126(b) petition consistent with the EPA's four-step interstate transport framework used to evaluate other ozone NAAQS.

Accordingly, because the EPA interprets ''contribute significantly to nonattainment'' and ''interfere with maintenance'' to mean the same thing under both CAA sections 110(a)(2)(D)(i)(I) and 126(b), the EPA's decision whether to grant or deny a CAA section 126(b) petition regarding both the 2008 and 2015 ozone NAAQS depends on application of the analysis used to address CAA section 110(a)(2)(D)(i)(I). That is, the EPA assesses whether there is a downwind air quality problem in the petitioning state (*i.e.,* step 1 of the four-step interstate transport framework); whether the upwind state where the source subject to the petition is located is linked to the downwind air quality problem (*i.e.,* step 2); and, if such a linkage exists, whether (balancing various cost and air quality factors) there are cost-effective emissions reductions available from sources in the upwind state to support a conclusion that the sources in the state significantly contribute to nonattainment or interfere with maintenance of the NAAQS (*i.e.,* step 3). If the EPA makes a CAA section 126(b) finding based on its determination that a source or sources will significantly contribute to nonattainment or interfere with maintenance, then the EPA will implement a remedy under CAA section 126(c) to ensure that the violation of the good neighbor provision is addressed through permanent and enforceable measures (*i.e.,* step 4).

In interpreting the phrase ''emits or would emit in violation of the prohibition of section [110(a)(2)(D)(i)],'' if the EPA or a state has already adopted provisions that eliminate the significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind states, then there simply is no violation of the CAA section 110(a)(2)(D)(i)(I) prohibition. Stated another way, requiring additional reductions from upwind sources would result in eliminating emissions that do not contribute significantly to nonattainment or interfere with maintenance of the NAAQS. Such an action is beyond the scope of the prohibition in CAA section 110(a)(2)(D)(i)(I) and, therefore, beyond the scope of the EPA's authority to make the requested finding under CAA section 126(b). *See EME Homer City,* 572 U.S. at 515 n.18, 521–22 (holding the EPA may not require sources in upwind states to reduce emissions by more than necessary to eliminate significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind states under the good neighbor provision).

Thus, it follows that if the EPA approved a state's SIP as adequately meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for a specific NAAQS, the EPA would not find that a source in that state was emitting in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I) absent new information demonstrating that the SIP is now insufficient to address the prohibition for that NAAQS. Similarly, if the EPA has promulgated a FIP that fully eliminates emissions that significantly contribute to nonattainment or interfere with maintenance in a downwind state for a specific NAAQS, the EPA has no basis to find that sources in the upwind state are emitting or would emit in violation of the CAA section 110(a)(2)(D)(i)(I) prohibition, absent new information to the contrary for that NAAQS.

The EPA notes that the approval of a SIP or promulgation of a FIP implementing CAA section 110(a)(2)(D)(i)(I) constitutes a determination that a state's emissions are adequately controlled considering the specific facts that the EPA analyzed while approving the SIP or promulgating the FIP. If a petitioner produces new data or information showing a different level of contribution or other facts the EPA did not consider when approving the SIP or promulgating the FIP, compliance with a SIP or FIP may not be determinative regarding whether the upwind sources emit or would emit in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I). *See* 64 FR 28250, 28274 n.15 (May 25, 1999); 71 FR 25328, 25336 n.6 (April 28, 2006); *Appalachian Power,* 249 F.3d at 1067 (later developments can be the basis for another CAA section 126 petition). Thus, in circumstances where a state is implementing a SIP or the EPA is implementing a FIP addressing CAA section 110(a)(2)(D)(i)(I) for a particular NAAQS, the EPA will evaluate the CAA section 126(b) petition to determine if the submitted petition raises new information that merits further consideration.

Turning to the comments on the EPA's proposed standard of review, several commenters took issue with the EPA's application of the four-step interstate transport framework under CAA section 126, arguing that in doing so the EPA is ''unlawfully eliminating [CAA] section 126 as an independent statutory tool for downwind states.'' Commenters disagreed with the EPA's interpretation of the relationship between the good neighbor provision under CAA sections 110(a)(2)(D)(i)(I) and 126(b), contending that Congress intended CAA section 126(b) petitions to be a legal tool to address interstate problems separate and distinct from SIP and FIP actions under CAA section 110. Commenters cite to legislative history and the Third Circuit's opinion in *GenOn,* 722 F.3d at 520–23, in support of their assertions that CAA section 126 is intended to remedy interstate transport problems notwithstanding the existence of CAA section 110. Commenters accordingly assert the EPA is incorrect in determining that its four-step interstate transport approach under CAA section 110(a)(2)(D)(i)(I) is appropriate for evaluating under CAA section 126(b) whether an upwind source or group of sources will significantly contribute to nonattainment or interfere with

[34] The EPA has also released two additional memoranda providing guidance to states developing good neighbor SIPs for the 2015 ozone NAAQS. *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards (August 31, 2018); and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards (October 19, 2018). All three memoranda are available in the docket for this final action and at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

maintenance of the 2008 and the 2015 ozone NAAQS in a petitioning downwind state.

The EPA has consistently acknowledged in prior actions under CAA section 126(b) that Congress created the good neighbor provision and CAA section 126 as two independent statutory processes to address one problem: Interstate pollution transport. *See, e.g.,* 83 FR 26666, 26675 (June 8, 2018) (proposal for this final action); 76 FR 69052, 69054 (November 7, 2011) (proposed action for the EPA's final action on New Jersey's CAA section 126(b) petition regarding SO_2 emissions from Portland Generating Station). As the commenters point out, the Third Circuit has upheld the EPA's position that CAA sections 110(a)(2)(D)(i) and 126 are two independent statutory processes to address the same problem of interstate transport. *See GenOn,* 722 F.3d at 520–23. However, the commenters misread the court's holding regarding the EPA's interpretation of the interplay between the two provisions. The Third Circuit spoke to the question of the *timing and sequence* of these processes—specifically, whether the EPA could act on a CAA section 126(b) petition in instances where the Agency had not yet acted on a CAA section 110 SIP addressing interstate transport for the same NAAQS. The Third Circuit also cited to a similar holding by the D.C. Circuit in *Appalachian Power. Appalachian Power,* 249 F.3d at 1047. Both courts upheld the EPA's position that it need not wait for the CAA section 110 process to conclude before acting on a CAA section 126(b) petition, thus affirming that both statutory provisions are independent from one another from a timing perspective. But neither court held that the EPA was precluded from applying the same analytical framework to resolving CAA section 126(b) petitions as it applies to analyze states' good neighbor obligations. Here, the Agency has not deferred action on New York's petition regarding the 2015 ozone NAAQS, for which good neighbor SIPs were due on October 1, 2018, until its action on the good neighbor SIPs (for the named upwind states) has concluded. Therefore, by acting on New York's CAA section 126(b) petition regarding the 2015 ozone NAAQS before concluding action on CAA section 110 SIPs, the EPA believes it has given CAA section 126(b) independent meaning as intended by Congress and the courts.

Moreover, the D.C. Circuit's opinion in *Appalachian Power* further supports the EPA's interpretation taken in this action: That while the Agency need not wait for the CAA section 110 process to conclude before acting on a CAA section 126(b) petition, the EPA reasonably imported the four-step interstate transport framework under CAA section 110 to CAA section 126 by interpreting the substantive requirements of the two provisions to be closely linked. The court in *Appalachian Power* specifically considered whether it was appropriate for the EPA to rely on findings made under the good neighbor provision in the NO_X SIP Call rulemaking in granting several CAA section 126(b) petitions raising similar interstate transport concerns with regards to the same NAAQS. Petitioners in that case argued that the EPA should instead make a finding that ''the specified stationary sources within a given state *independently* met [the statute's] threshold test for effect on downwind nonattainment.'' 249 F.3d at 1049. The court found that by referring to stationary sources that emit pollutants ''in violation of the prohibition of [CAA section 110(a)(2)(D)(i)],'' Congress ''clearly hinged the meaning of [CAA] section 126 on that of section 110(a)(2)(D)(i).'' *Id.* at 1050. The court, therefore, concluded that given CAA section 126's silence on what it means for a stationary source to violate CAA section 110(a)(2)(D)(i), the EPA's approach of relying on findings under CAA section 110(a)(2)(D)(i) was reasonable and, therefore, entitled to deference under *Chevron,* 467 U.S. at 843. *See Appalachian Power,* 249 F.3d at 1050. The EPA's approach to addressing New York's CAA section 126(b) petition through the application of the four-step interstate transport framework and consideration of findings made in the CSAPR Update and the Determination Rule is therefore reasonable and consistent with prior case law.

Several commenters assert that the EPA cannot rely on recent regional transport rulemakings because they did not fully address good neighbor obligations. Commenters assert that the existence of the CSAPR Update does not foreclose a state from seeking—or the EPA from providing—redress under CAA section 126(b) when the state finds itself struggling to meet NAAQS due to significant upwind contributions or interference. When the EPA promulgated the CSAPR Update it explicitly noted that it only served as a ''partial remedy'' as to the 2008 ozone NAAQS. Commenters argue that the fact that New York is continuing to experience challenges attaining the 2008 ozone NAAQS demonstrates that significant interstate pollution and associated attainment difficulties remain after the implementation of the CSAPR Update. Commenters therefore assert that the EPA's reliance on the Determination Rule as a complete remedy with respect to the 2008 ozone NAAQS is arbitrary and capricious because the rule fails to eliminate current and ongoing significant contributions by upwind states and sources.

The EPA agrees that the existence of the CSAPR Update does not foreclose redress under CAA section 126(b), but the commenters misstate the EPA's basis for evaluating the petition in light of the CSAPR Update. Although the EPA explained in the proposal that the Determination Rule concluded that the emissions reductions required by the CSAPR Update would fully address covered states' good neighbor obligations for the 2008 ozone NAAQS, the EPA did not rely on these rules (*i.e.,* the CSAPR Update and the Determination Rule) alone to propose denial of the petition.[35] Rather, as described in more detail in Section III.C below, the EPA has reviewed the petition consistent with its interpretation of CAA section 126(b) and the good neighbor provision to see if additional information that was not previously considered by the EPA in either the CSAPR Update or the Determination Rule would justify imposing the additional control requirements that New York requested. As described in Section III.C, the EPA specifically considered the relevance of current air quality in New York. However, based on its evaluation of the information provided in the petition, the EPA has found that the petitioner has not satisfied its burden to demonstrate that the sources named in the petition emit or would emit in violation of the good neighbor provision with respect to either the 2008 or 2015 ozone NAAQS.

C. The EPA's Evaluation of Whether the Petition Is Sufficient To Support a CAA Section 126(b) Finding

This section discusses the approach that the EPA used to review the sufficiency of New York's CAA section 126(b) petition and the EPA's resulting determination that New York has not provided an adequate technical and analytic basis for the EPA to make a finding nor does the EPA have available information to support such a finding.

Consistent with the EPA's approach to evaluating several prior CAA section

[35] Similar to Kentucky, the EPA did not rely on its approval of the State's SIP alone to propose denial as to the sources named in that state but considered whether the petition raised new information not previously considered in that action.

126(b) petitions, the EPA interprets CAA section 126(b) as placing an burden on the petitioner to establish a technical and analytic basis for the specific finding requested. Thus, the EPA first looks to see if the petition identifies or contains a sufficient basis to make the requested finding. *See, e.g.,* 76 FR 19662, 19666 (April 7, 2011) (proposed response to petition from New Jersey regarding SO_2 emissions from the Portland Generating Station); 83 FR 16064, 16070 (April 13, 2018) (final response to petition from Connecticut regarding ozone emissions from the Brunner Island Steam Electric Station); 83 FR 50444, 50452 (October 5, 2018) (final response to petitions from Delaware and Maryland regarding ozone emissions from four EGU facilities and 36 individual EGUs, respectively).[36]

While the EPA interprets CAA section 126(b) as putting the burden on the petitioner, rather than the EPA, to provide a basis or justification for making the requested finding, nothing precludes the EPA from choosing to conduct an independent analysis on a discretionary basis when the Agency determines it would be helpful in evaluating a petition. The EPA has chosen to invoke its discretion in prior actions on CAA section 126(b) petitions concerning ozone, primarily where the Agency already had technical data or findings it could rely on as part of its independent analysis. Notably, because the supplemental information already existed at the time the EPA acted on those petitions, the EPA could leverage such information in its action without undertaking new analyses that would naturally take significantly more time and resources to develop.[37] Consistent with this position and as described further in this section of the notification, the EPA is using supplemental information, when currently available, as part of its discretionary independent analysis of New York's CAA section 126(b) petition. The results of the following analysis support the EPA's determination that New York has not provided an adequate technical and analytic basis for the EPA to make a finding, nor does the EPA's analysis of supplemental information available to it outside of the basis that New York has provided support such a finding.

1. The EPA's Evaluation of New York's Petition Considering Step 1

As discussed in Section IV.B.1 of the proposal, with respect to step 1 of the four-step interstate transport framework, the EPA began by evaluating New York's petition to determine whether the State identified a downwind air quality problem (nonattainment or maintenance) that may be impacted by ozone transport from other states. The EPA conducted this evaluation for Chautauqua County and the NYMA regarding both the 2008 and 2015 ozone NAAQS.

As discussed in Section II.C of this notification, the EPA typically focuses its analysis regarding potential downwind air quality problems on a future analytic year given the forward-looking nature of the good neighbor obligation in CAA section 110(a)(2)(D)(i)(I). The good neighbor provision requires that states prohibit emissions that ''will'' significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. The EPA reasonably interprets this language as permitting states and the EPA in implementing the good neighbor provision to prospectively evaluate downwind air quality problems and the need for further upwind emissions reductions.

Particularly relevant to this action, the EPA also applied this interpretation of ''will'' in the Determination Rule to evaluate remaining good neighbor obligations with respect to the 2008 ozone NAAQS for the CSAPR Update states, including the nine upwind states cited in New York's petition. 83 FR 65889–90. As explained in that action, a key decision informing the application of the interstate transport framework is the selection of a future analytic year. Several court decisions have guided the factors that the EPA considers in selecting an appropriate future analytic year for such an analysis. First, in *North Carolina,* the D.C. Circuit held that the timeframe for implementation of emissions reductions required by the good neighbor provision should be selected by considering the relevant attainment dates of downwind nonattainment areas affected by interstate transport of air pollution. 531 F.3d at 911–12. Moreover, the Supreme Court and the D.C. Circuit have both held that the EPA may not over-control upwind state emissions relative to the downwind air quality problems. Specifically, the courts found that the Agency may not require emissions reductions (at steps 3 and 4 of the interstate transport framework) from a state that are greater than necessary to achieve attainment and maintenance of the NAAQS in all the downwind areas to which that state is linked. *See EME Homer City,* 572 U.S. at 521–22; *EME Homer City II,* 795 F.3d at 127, 129–30 (on remand from the Supreme Court, finding ozone-season NO_X budgets for ten states invalid because the EPA's modeling showed that the downwind air quality problems to which these states were linked would be resolved by the time the budgets would be implemented). These court decisions support the Agency's choice to use a future analytic year to help ensure that any emissions reductions that the EPA may require of sources in upwind states neither over- or under-control emissions with respect to the EPA's projections as to downwind air quality at the time by which that those controls could feasibly be implemented.

In the Determination Rule, the EPA established the appropriate future analytic year for purposes of assessing remaining interstate transport obligations for the 2008 ozone NAAQS. 83 FR 65889–890. The EPA's analysis considered two primary factors: (1) The applicable attainment dates for the 2008 ozone NAAQS; and (2) the timing to feasibly implement new NO_X control strategies not previously addressed in the CSAPR Update. As the applicable attainment dates, the EPA explained that the next attainment dates for the 2008 ozone NAAQS would be July 20, 2021, for nonattainment areas classified as Serious, and July 20, 2027, for nonattainment areas classified as Severe.

In the Determination Rule, the EPA then evaluated the timeframe necessary to implement additional NO_X control strategies at various sources across the region. 83 FR 65893–901. For EGUs, the EPA explained that it was appropriate to consider the timeframe required for implementation of selective catalytic reduction (SCR) across the region because of the potential for larger emissions reductions as compared to selective non-catalytic reduction (SNCR). The EPA determined that SCR project development and installation can require up to 39 months for an individual power plant installing controls on more than one boiler,[38] and that a minimum of 48 months (4 years) is a reasonable time-period needed to complete all necessary steps of SCR projects at EGUs on a regional scale, considering the necessary stages of post-

[36] The EPA's response to the Maryland and Delaware petition is currently subject to judicial review in the D.C. Circuit. *Maryland* v. *EPA,* No. 18–1285 (D.C. Cir. filed October 15, 2018).

[37] *See* 83 FR 16064 (April 13, 2018); 83 FR 50444 (October 5, 2018).

[38] *See* Table 3–1 in Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies. EPA Final Report. EPA–600/R–02/073. October 2002. Available at *https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=63473.*

combustion control project planning, shepherding of labor and material supply, installation, coordination of outages, testing, and operation. The EPA further concluded that SNCR installations, while generally having shorter project timeframes (*i.e.,* up to 16 months for an individual power plant installing controls on more than one boiler), share similar implementation steps with and need to account for the same regional factors as SCR installations.[39] The EPA, therefore, concluded that it may reasonably take up to 4 years to install the new emissions controls regionwide for EGUs.

The EPA further explained that many of the same considerations affecting the EPA's analysis of regionwide implementation of controls at EGUs would also affect the regionwide implementation of controls at non-EGUs, which may be more complex considering the diversity of non-EGU sources as well as the greater number and smaller size of the individual sources. 83 FR 65901–04. The EPA noted that preliminary estimates for the implementation of some potential control technologies on non-EGUs only account for the time between bid evaluation and startup but do not account for additional considerations such as pre-bid evaluation studies, permitting, and installation of monitoring equipment. In addition, these preliminary estimates for implementing control technologies do not include the time and resources needed to install such technologies on a sector- or region-wide basis. Accordingly, the EPA concluded that it was reasonable to assume for purposes of the Determination Rule that an expeditious timeframe for installing sector- or region-wide controls on non-EGU sources could also be 4 years or more.

Considering the timeframes for regionwide implementation of control strategies and the timeframe in which a rulemaking requiring such controls would be finalized, the EPA concluded that reductions from such control strategies were unlikely to be implemented for a full ozone season until 2023. The EPA acknowledged that 2023 is later than the attainment date for nonattainment areas classified as Serious (July 20, 2021), but concluded that it was unlikely emissions control requirements could be feasibly promulgated and implemented by that earlier date. Moreover, the EPA noted that 2023 was well in advance of the subsequent attainment date for areas classified as Severe. Accordingly, the EPA determined that 2023 was a reasonable year to assess downwind air quality to evaluate any remaining requirements under the good neighbor provision for the 2008 ozone NAAQS. 83 FR 65901–05.

After selecting the analytic year, the EPA then used the Comprehensive Air Quality Model with Extensions (CAMx v6.40) to model emissions in 2011 and 2023, based on updates provided to the EPA from states and other stakeholders on a January 6, 2017, Notice of Data Availability (NODA).[40] [41] This updated modeling was used in the Determination Rule to estimate ozone design values in 2023, as described in the Determination Rule Air Quality Modeling Technical Support Document (TSD).[42] The EPA used outputs from the 2011 and 2023 model simulations to project base period 2009–2013 average and maximum ozone design values to 2023 at monitoring sites nationwide. In projecting future year design values, the EPA applied its own modeling guidance,[43] which recommends using model predictions from the ''3 x 3'' array of grid cells surrounding the location of the monitoring site.[44] Considering the comments on the January 2017 NODA and other analyses, the EPA also projected 2023 design values based on a modified version of the ''3 x 3'' approach for those monitoring sites located in coastal areas. Briefly, in this alternative approach, the EPA eliminated from the design value calculations those modeling data in grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation).[45] For each individual monitoring site, the base period 2009–2013 average and maximum design values, and the 2023 projected average and maximum design values (based on both the ''3 x 3'' approach and the alternative approach) affecting coastal sites are available in Excel format in the docket for this action and in PDF format at *https://www.epa.gov/airmarkets/memo-supplemental-information-interstate-transport-sips-2008-ozone-naaqs.*

In the Determination Rule, the EPA followed the same approach for identifying receptors based on this modeling as in the CSAPR Update rulemaking process. That is, the EPA considered a combination of modeling projections and monitoring data to identify receptor sites that are projected to have problems attaining or maintaining the NAAQS.[46] Specifically, the EPA identified nonattainment receptors as those monitoring sites with current measured values exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. The EPA also identified maintenance receptors as those

[39] *See* the month-by-month evaluation of SNCR installation presented in Exhibit A–6 in Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies. EPA Final Report. EPA–600/R–02/073. October 2002. Available at *https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=63473.* Evaluation of implementation timeframes for various control strategies is also found in the EPA's CSAPR Update EGU NO_X Mitigation Strategies Final Rule TSD. *See* Docket ID No. EPA–HQ–OAR–2015–0500 (available at *http://www.regulations.gov*).

[40] Using the 2023 analytic year also allowed the EPA to begin the updated analysis using the data sets originally developed for a January 2017 Notice of Data Availability (NODA) (82 FR 1733, January 6, 2017), which the EPA revised in response to stakeholder feedback. Accordingly, the EPA initiated its analysis more quickly than if a different year had been chosen, which might have delayed subsequent rulemaking actions and therefore emissions reductions.

[41] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017). This memorandum also supplements the information provided in, ''Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I).'' Memorandum from Stephen D. Page, Director, U.S. EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10. October 27, 2017. Available at *https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf.*

[42] Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values. U.S. EPA Office of Air Quality Planning and Standards. June 2018. Document developed to support the Determination Rule, 83 FR 65878 (December 21, 2018). Available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*

[43] ''Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze.'' Memorandum from Richard Wayland, Division Director, Air Quality Assessment Division, U.S. EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10. December 3, 2014. Available at *https://www3.epa.gov/scram001/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf.*

[44] The EPA's modeling uses 12km^2 grid cells.

[45] A model grid cell is identified as a ''water'' cell if more than 50 percent of the grid cell is water based on the 2006 National Land Cover Database. Grid cells that meet this criterion are treated as entirely over water in the WRF modeling used to develop the 2011 meteorology for the EPA's air quality modeling. (*See* Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values. U.S. EPA Office of Air Quality Planning and Standards. June 2018. Document developed to support the Determination Rule, 83 FR 65878 (December 21, 2018). Available at *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-updated-2023-projected-ozone-design.*)

[46] *See* 81 FR 74530–74532 (October 26, 2016).

monitoring sites with projected maximum design values exceeding the NAAQS. Specifically, maintenance receptors included sites with current measured values below the NAAQS with projected average and maximum design values exceeding the NAAQS and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS.

Pertinent to this action, the EPA's examination in the Determination Rule of the 2023 projected design values for Chautauqua County indicates that this area is not projected to be in nonattainment or have a maintenance problem in 2023 for either the 2008 or the 2015 ozone NAAQS. The EPA's examination of the 2023 projected design values for the NYMA indicates that this area is not projected to be in nonattainment or have a maintenance problem in 2023 for the 2008 ozone NAAQS. However, the EPA's modeling indicates that the NYMA is projected to be in nonattainment in 2023 with respect to the 2015 ozone NAAQS.

Because the EPA has already conducted a rulemaking evaluating good neighbor obligations for the 2008 ozone NAAQS under CAA section 110(a)(2)(D)(i)(I) in which the Agency used 2023 as the future analytic year and because, as discussed previously, CAA section 126(b) directly incorporates the CAA section 110(a)(2)(D)(i) standard, the EPA believes it is also appropriate to consider the 2023 modeling conducted for the Determination Rule in evaluating whether New York's petition has adequately demonstrated that there will be a downwind air quality problem with respect to the 2008 ozone NAAQS in Chautauqua County and the NYMA.[47] Moreover, the EPA believes it is appropriate to consider the 2023 modeling when evaluating the petition's claims with respect to the 2015 ozone NAAQS because the 2023 ozone season aligns with the attainment year for the 2015 NAAQS in Moderate ozone nonattainment areas, consistent with the D.C. Circuit's instruction in *North Carolina.*[48] As explained at proposal, while the EPA is not in this action reopening the analysis and findings made in the Determination Rule with respect to the 2008 ozone NAAQS, the EPA evaluated the petition, consistent with the standard of review described in Section III.B, to determine whether additional information not considered in the Determination Rule should influence the EPA's finding as to whether the sources named in New York's petition emit or would emit in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I).

The New York petition raises concerns about the assumptions and results of the EPA's modeling. Specifically, the petition indicates significant concerns with the EPA's expectation that uncontrolled EGUs will reduce their emissions rates in the absence of unit-level enforceable limits and with the EPA's treatment of model cells containing a land/water interface. The petition does not further elaborate on the basis for these concerns, and the EPA, therefore, has no reason to believe that its 2023 modeling is unreliable. Moreover, the EPA already addressed concerns regarding the EGU assumptions in the 2023 modeling in response to comments raised in the Determination Rule. *See* 83 FR 65886–89 (explaining statutory rationale regarding when enforceable emissions limitations are required and responding to comments); 83 FR 65913–15 (responding to comments concerning projections of EGU emissions in 2023).[49]

As described earlier in this section, the EPA also addressed concerns regarding the treatment of model cells containing land/water interface in the Determination Rule by calculating design values using two different methodologies. 83 FR 65917. The petition does not provide any new information not already considered by the EPA in the Determination Rule as to these issues and therefore, the EPA has no basis to reconsider its conclusions finalized in that action.

The EPA received several comments challenging the conclusion that it is appropriate to evaluate air quality in a future year to determine whether there is a violation of the good neighbor provision in evaluating New York's CAA section 126(b) petition. First, the EPA received comments asserting that the EPA's reliance on the term ''will'' as it appears in the good neighbor provision to justify consideration of air quality in a future year is inconsistent with the plain language of the CAA. Commenters contend that Congress specified that implementation plans under CAA section 110(a)(2)(D)(i) must prohibit ''any'' pollution from ''any'' source that will contribute significantly to nonattainment and interfere with maintenance, and that this includes pollution that will do so between now and 2023.

The EPA does not agree that analysis of air quality in a future year is inconsistent with the statute. The EPA reasonably interprets the word ''will'' in the good neighbor provision as permitting states and the EPA in implementing the good neighbor provision to prospectively evaluate downwind air quality problems and the need for further upwind emissions reductions. In the EPA's prior regional transport rulemakings, the Agency has routinely evaluated whether upwind states ''will'' significantly contribute to nonattainment or interfere with maintenance based on projections of air quality in the future year in which any emissions reductions would be expected to go into effect. For the 1998 NO_X SIP Call, the EPA used an analytic year of 2007. For the 2005 CAIR, the Agency used analytic years of 2009 and 2010 for ozone and $PM_{2.5}$, respectively. 63 FR 57450; 70 FR 25241. The EPA applied the same approach in finalizing CSAPR in 2011, the CSAPR Update in 2016, and the Determination Rule in 2018 by evaluating air quality in 2012, 2017 and 2023, respectively. 76 FR 48211; 81 FR 74537.

The D.C. Circuit affirmed the EPA's interpretation of ''will'' in CAIR, finding the EPA's consideration of future projected air quality (in addition to current measured data) to be a reasonable interpretation of an ambiguous term. *North Carolina,* 531 F.3d at 913–14. The *North Carolina* court affirmed the EPA's interpretation, explaining that ''will'' ''can mean either certainty or indicate the future tense'' and held that it is reasonable for the EPA to give effect to both potential meanings of the word. *Id.* Thus, although the court acknowledged that the term ''will'' could refer to the certainty of an upwind state's impact on a downwind state (*i.e.,* based on current measured nonattainment), the court also clearly acknowledged the ambiguity of this term and indicated this was not the only reasonable interpretation. Given this ambiguity, the D.C. Circuit affirmed that the EPA's approach is permissible under the Act.

While the EPA agrees that the references to ''any'' in CAA section 110(a)(2)(D)(i) mean that any source of emissions of any air pollutant having the requisite impact may be subject to control under that provision, the commenter does not explain how this term limits the EPA's discretion to

[47] *See* n.1, *supra,* regarding the potential impact on this final action of the September 13, 2019, decision of the D.C. Circuit in *Wisconsin* v. *EPA,* No. 16–1406.

[48] The 2023 ozone season represents the last full season from which data can be used to determine attainment with the 2015 ozone NAAQS by the August 3, 2024, attainment date for nonattainment areas classified as Moderate.

[49] The EPA's conclusions regarding the EGU assumptions in the 2023 modeling are also the subject of judicial review in the D.C. Circuit. *New York* v. *EPA,* No. 19–1019 (D.C. Cir.).

evaluate of future air quality when evaluating whether such emissions have the requisite impact on downwind areas and therefore whether such control is necessary or authorized. Rather, as the commenter fails to acknowledge, the EPA is only authorized under the good neighbor provision to require the prohibition of such emissions in ''amounts which will'' improperly impact another state with respect to the NAAQS. The Supreme Court has held that this language means that any emissions reductions imposed under the good neighbor provision be no greater than necessary to address downwind NAAQS, *i.e.,* that the EPA avoid unnecessary over-control of emissions from upwind states. *See EME Homer City,* 572 U.S. at 521–22. In interpreting that decision, the D.C. Circuit declared the EPA's emissions reduction requirements for certain states to be invalid under the good neighbor provision where the EPA had information indicating that there will be no downwind air quality problems by the time the emissions reductions would have been implemented. *See EME Homer City II,* 795 F.3d at 130. Thus, the EPA does not agree that it is obligated to impose emissions reductions if there will be no downwind air quality issues to address by the time such reductions could be in place.

Several commenters contend that, by evaluating air quality in a future year the EPA fails to give ''emits'' in the phrase ''emits or would emit'' under CAA section 126(b) independent meaning, thereby unreasonably ignoring existing air quality issues in evaluating CAA section 126(b) petitions. Commenters contend that the provision is intended to provide relief for both current and future attainment and maintenance problems, with one commenter noting that the ''or'' conjunction indicates that the criteria for demonstrating a violation could be fulfilled either through current or future conditions. Thus, the commenters conclude that it is inappropriate for the EPA to rely on the word ''will'' in the good neighbor provision to base its analysis on future air quality without considering current conditions.

One commenter further asserts that the EPA's forward-looking approach to interpreting the requirements of CAA section 126(b) is inconsistent with its prior grant of a CAA section 126(b) petition from New Jersey, which was based on the named source's current and ongoing emissions.[50] The commenter cites the Third Circuit's decision which upheld the EPA's action on the petition in *GenOn,* indicating that the court noted, in construing the timing provisions of CAA section 126 ''that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'' 722 F.3d 513, 520–21 (3d Cir. 2013) (quoting *TRW Inc.* v. *Andrews,* 122 S. Ct. 441 (2001)).

The EPA agrees it must give meaning to the statutory terms of CAA section 126(b) and has done so here. As an initial matter, certain commenters misconstrue the EPA's forward-looking evaluation of air quality impacts under CAA section 126(b) as stemming from the phrase ''would emit'' under this provision. As described in this section, the EPA looks to future *air quality* impacts under CAA section 126(b) because of the future-looking reference in the word ''will'' under the good neighbor provision, a violation of which is the explicit condition precedent for making the requested finding under CAA section 126(b). As explained in the EPA's prior actions under CAA section 126(b), the EPA reasonably interprets the terms ''emits or would emit'' as referring to the *named source or sources' operating conditions,* not air quality.[51] The EPA interprets the term ''emits'' as referring to a source's current emissions levels and ''would emit'' as referring to a source's reasonably anticipated future emissions levels. Accordingly, the EPA has given ''emits'' meaning independent from ''would emit'' by reasonably interpreting the terms as referring to the current and future operating conditions of the source or sources named in a CAA section 126(b) petition.

Contrary to the commenters' contention, the ''emits'' language is not in conflict with the incorporation of the term ''will'' as the standard for reviewing CAA section 126(b) petitions. Consistent with prior actions under CAA section 110(a)(2)(D)(i)(I), the EPA evaluates at step 1 of its analysis whether the downwind area in question will have an air quality problem in a relevant future year and at step 2 whether emissions from the upwind state in which the named source is located will impact the downwind area such that sources in the state should be subject to further analysis in step 3. If the EPA determines that the state will be linked to a downwind air quality problem in a relevant future year, it is in step 3 that the EPA evaluates the sources' emissions and operating conditions to determine whether the source named in the petition can and should be subject to control, and thus found to significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind. Thus, the EPA's interpretation reasonably gives meaning to *both* the term ''will'' as incorporated into CAA section 126(b) and the ''emits or would emit'' clause in the context of the four-step interstate transport framework. Commenters' interpretation reads ''will'' out of the good neighbor provision and would require the EPA to interpret the ''prohibition'' of CAA section 110(a)(2)(D)(i)(I) in two contrary ways depending on the statutory process—as future-looking in a CAA section 110 analysis and limited to current conditions in a CAA section 126 analysis—despite the fact that CAA section 126(b) directly incorporates the terms of the good neighbor provision. The EPA does not agree that this would be a reasonable interpretation of the statutory provisions; at minimum, the EPA believes its interpretation is reasonable.

The EPA applied its same interpretation in acting on New Jersey's CAA section 126(b) petition for the Portland Generating Station, which was addressed in the Third Circuit's *GenOn* decision and which commenters incorrectly characterize as contrary to the EPA's interpretation here. In the EPA's proposed action on that petition, the EPA stated that it ''interprets the term 'emits or would emit' as a reference to the source's current and potential future emissions. . . . For the emissions the source 'would emit' (*i.e.,* its potential future emissions), it is appropriate to consider the level at which the source could emit given the existing constraints on its emissions. . . .'' 76 FR 19671. The EPA's treatment of New Jersey's petition with respect to current nonattainment is also not inconsistent with its forward-looking evaluation of New York's petition under step 1. The EPA's action on New Jersey's petition found that the named source alone caused downwind violations of the relevant SO_2 NAAQS, and that the modeled magnitudes of those violations were *seven* times the NAAQS. 76 FR 69057. Ambient SO_2 concentrations mostly vary only

[50] Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (November 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 SO_2 NAAQS prior to issuance of designations for that standard).

[51] *See* Response to June 1, 2016 Clean Air Act Section 126(b) Petition from Connecticut, Final Action, 83 FR 16070 (April 13, 2018); Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland, Final Action, 83 FR 50453 (October 5, 2018).

depending on a specific source's operation, and to the extent a source is consistently operating the same way over time, the SO_2 impacts from that source are anticipated to remain the same.[52] There was no indication that the future operation of the source named in New Jersey's petition would change in the absence of emissions limits, so it was unnecessary for the EPA to evaluate the source's expected downwind impact on the SO_2 NAAQS in New Jersey in a future year as the result would have likely been the same. The historic variability of ozone is often influenced by meteorology and other factors, which can affect the magnitude of impact on downwind air quality from year to year. *See* CSAPR Update, 81 FR 74504, 74513–14 (October 26, 2016) (discussing observational studies regarding the nature of ozone transport). Moreover, given the numerous sources impacting downwind ozone concentrations and the general trend in decreasing NO_X emissions, current air quality is often not indicative of air quality in a future year. Thus, current conditions do not necessarily indicate whether there will be an ozone transport problem in a future year.

Several commenters assert that the EPA may not rely on the 2023 modeling to evaluate future air quality in assessing New York's petition because it does not align with the appropriate attainment dates, and in particular, the 2021 Serious area attainment date for the 2008 ozone NAAQS applicable to the NYMA. Commenters contend that the D.C. Circuit has found that the statute unambiguously requires compliance with NAAQS attainment deadlines, based on the statutory requirement that implementing provisions be ''consistent'' with Title I of the CAA. *North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008). Commenters therefore contend that the timing of good neighbor obligations must be directly tied to actual attainment dates, not to a date that merely ''considers'' such dates. Commenters cite the D.C. Circuit opinion in *Natural Resources Defense Council* v. *EPA,* evaluating an attempt by the EPA to extend 2008 ozone NAAQS compliance deadlines for several months, to include the 2018 ozone season. 777 F.3d 456, 458–59 (D.C. Cir. 2014) (*NRDC*). The court rejected this delay as ''untethered to Congress' approach'' and held that the EPA was required to adhere to the 1997 ozone NAAQS attainment timeline set by the 1990 Clean Air Act amendments, plumbed to the date of attainment designations. *Id.* at 469.

The EPA disagrees that it is inappropriate to rely on the 2023 modeling because it does not align with a particular attainment date. As an initial matter, even assuming that a year aligned with the Serious area attainment date could be an appropriate analytic year for the EPA to consider in evaluating future air quality in New York, the commenters have not submitted any information that indicates there will be an air quality problem under the 2008 ozone NAAQS in New York by the Serious area attainment year of 2021, nor did the petition provide any. As discussed in Section III.C of this notification, the petitioner bears the burden of establishing a technical basis for the specific finding requested and has not done so here. The projected ozone design values for 2023 represent the best available data regarding expected air quality in New York in any future year. These data were developed over the course of multiple years of analytic work, reflecting extensive stakeholder feedback and the latest emissions inventory updates. The EPA assembled an emissions inventory, performed air quality analytics in 2016 and released corresponding data and findings in the January 2017 NODA. Subsequent to stakeholder feedback on the NODA, the EPA was able to further update its emissions inventories and air quality modeling and release results for the 2023 future analytic year in October 2017. The EPA has no comparable data available for earlier analytic years between 2017 and 2023 that have been through an equally rigorous analytic and stakeholder review process, and, thus, the 2023 data are the best data currently available for the EPA to evaluate New York's claims.

Moreover, to the extent the commenters are challenging the EPA's basis for selecting 2023 as an analytic year to assess good neighbor obligations for the 2008 ozone NAAQS in prior rulemaking actions, such claims are not properly raised in this rulemaking action. As noted earlier in this discussion, the EPA solicited and received public comments regarding the bases for selecting the 2023 analytic year in the Determination Rule, including the EPA's consideration of attainment dates. That action is currently subject to judicial review in the D.C. Circuit, *New York* v. *EPA,* No. 19–1019 (D.C. Cir.). The EPA did not, in this action, reopen for public comment the analyses and findings made in the Determination Rule. Rather, the EPA evaluated New York's petition to determine whether additional information not considered in the Determination Rule should influence the EPA's finding as to whether the sources named in New York's petition emit or would emit in violation of the prohibition of CAA section 110(a)(2)(D)(i)(I). Accordingly, comments regarding the EPA's decision to analyze air quality in 2023 in the Determination Rule are not within the scope of this action.[53]

Nonetheless, the EPA does not agree that either the text of the statute or the court's holding in *North Carolina* dictates that a future analytic year evaluated under the good neighbor provision must be identical to the next attainment deadline. The EPA selected a 2023 analytic year for purposes of evaluating remaining good neighbor obligations for the 2008 ozone NAAQS in the Determination Rule considering both relevant future attainment dates and the anticipated timeframe for implementation of additional emissions reductions across the fleet in the region of states being analyzed. For the reasons explained below, consideration of these two factors is consistent with the statute.

First, as to the statute, the good neighbor provision does not set forth any timeframe for the analysis of downwind air quality or the implementation of upwind emissions reductions. On its face, the good neighbor provision is therefore ambiguous as to when the upwind emissions reductions it calls for must be in place. The EPA acknowledges that the good neighbor provision does indicate that the prohibition of upwind state emissions must be ''consistent with the provisions of [title I],'' and that the D.C. Circuit held in its *North Carolina* decision that the other provisions with which the implementation of the good neighbor provision must be consistent include the attainment dates in part D of title I of the Act. However, the good neighbor provision does not specify what it means to be ''consistent with'' the other provisions of the Act, and courts have

[52] *See, e.g.,* Data Requirements Rule for the 2010 SO_2 NAAQS, 80 FR 51057 (explaining that peak concentrations of SO_2 are commonly because of one or a few sources, peak concentrations are typically near the source, and SO_2 is not the result of complex atmospheric chemical reactions unlike ozone).

[53] The EPA similarly solicited and received public comment on the use of a 2023 analytic year in acting on Kentucky's SIP submission, which was based on a similar evaluation as that used in the Determination Rule. 83 FR 33730 (July 17, 2018). No legal challenges to the EPA's determinations in that SIP action were filed within the period for judicial review, and comments regarding the appropriateness of selecting a 2023 analytic year in that action are similarly outside the scope of this rulemaking.

routinely held that this phrase is ambiguous. *See, e.g., EDF* v. *EPA,* 82 F.3d 451, 457 (D.C. Cir. 1996) (holding the requirement that implementation of transportation control measures be ''consistent with'' the applicable implementation plan under section 176 of the CAA is ''flexible statutory language,'' which does not require ''exact correspondence . . . but only congruity or compatibility,'' thus requiring a court to defer to reasonable Agency determinations); *Natural Resources Defense Council* v. *Daley,* 209 F.3d 747, 754 (D.C. Cir. 2000) (finding that statute requiring fishing quotas be ''consistent with'' a fishery management plan was ambiguous); *NL Indus.* v. *Kaplan,* 792 F.2d 896, 898–99 (9th Cir. 1986) (statutory phrase ''consistent with the national contingency plan'' in 42 U.S.C. 9607(a)(2)(B) ''does not necessitate strict compliance with [national contingency plan's] provisions''). Moreover, while CAA section 181 identifies timeframes for attaining ozone standards in downwind states, it does not specify deadlines for good neighbor emissions reductions in upwind states.[54] Therefore, Congress has left a gap for the EPA to fill. *See Chevron,* 467 U.S. at 843. In light of this ambiguity, the good neighbor provision cannot be read to require implementation of upwind emissions reductions on a specific timeframe, and an analytic year used to evaluate potential obligations under the good neighbor provision should be considered reasonable provided the EPA has demonstrated that the selected analytic year is chosen with consideration paid to, and is not inconsistent with, downwind attainment dates and other relevant attainment planning requirements in title I of the Act.

Moreover, the statute does not impose inflexible deadlines for attainment. The general planning requirements that apply to nonattainment areas under subpart 1 of part D provide that the Administrator may extend the default 5-year attainment date by up to 10 years ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.'' CAA section 172(a)(2)(A). In the case of the ozone NAAQS, this provision is overridden by the more specific attainment date provisions of subpart 2. The general timeframes provided for attainment in ozone nonattainment areas in the CAA section 181(a)(1) table may be (and often are) modified pursuant to other provisions in CAA section 182, considering factors such as measured ozone concentrations and the feasibility of implementing additional emissions reductions. For example, the 6-year timeframe for attainment of the 2008 ozone NAAQS in Moderate areas (the July 2018 attainment date) could be extended under certain circumstances to 2020, pursuant to CAA section 181(a)(5). And pursuant to CAA section 181(b)(2), when downwind areas are unable to implement sufficient reductions via feasible control technologies by one attainment date, those areas will be reclassified, or ''bumped up'' in classification, and given a new attainment date with additional time to attain. With reclassification, the date for an area to attain the 2008 ozone NAAQS could be extended to 2021, 2027 and 2032, for areas classified as Serious, Severe and Extreme, respectively. Each of these deadlines could be subject to further extensions of up to 2 years pursuant to CAA section 181(a)(5). Part D further defines what control strategies states must implement by sources in nonattainment areas by each of the applicable attainment dates, incorporating considerations of technological feasibility at each stage. *See, e.g.,* CAA section 172(c)(1), (2) (requiring implementation of reasonably available control measures and reasonable further progress in designated nonattainment areas); CAA section 182(b)(1)(A), (c)(2)(B) (setting explicit reasonable further progress targets for ozone precursors, and providing an exception when the SIP includes ''all measures that can feasibly be implemented in the area, in light of technological achievability'').

Thus, while the statute indicates that downwind areas should attain as expeditiously as practicable, but no later than the attainment dates specified in CAA sections 172(a)(2) and 181(a)(1), implementation provisions for nonattainment planning lay out myriad exceptions to those deadlines, including for circumstances when attainment is simply infeasible. *See Whitman* v. *Am. Trucking Ass'ns, Inc.,* 531 U.S. 457, 493–94 (2001) (Breyer, J., concurring) (considerations of costs and technological feasibility may affect deadlines established for attainment in specific areas). The EPA's approach to evaluating upwind emissions reductions based on technological feasibility is consistent with the requirements imposed on downwind nonattainment areas required to implement certain ''reasonable'' controls within the targeted timeframe.

The EPA further disagrees with the comment asserting that the D.C. Circuit's *North Carolina* decision requires the EPA to only use the next relevant attainment date in selecting its future analytic year. The *North Carolina* decision faulted the EPA for not considering upcoming attainment dates in downwind states when setting compliance deadlines for upwind emissions reductions in CAIR, where the EPA had evaluated only the feasibility of implementing upwind controls. 531 F.3d at 911–12. But the court did not hold that the CAA requires that compliance deadlines for good neighbor emissions reductions (and thus, the future analytic year) be identical to a specific attainment date in downwind areas, let alone the next upcoming date. Nor did the court opine that the EPA would never be justified in setting compliance dates that fall after the next upcoming downwind attainment date or that are based, in part, on the feasibility of implementing upwind emissions reductions. Indeed, in remanding the rule, the D.C. Circuit acknowledged that upwind compliance dates may, in some circumstances, come after attainment dates. *Id.* at 930 (where the attainment date relevant to the discussion was 2010, instructing the EPA to ''decide what date, whether 2015 or earlier, is as expeditious as practicable for states to eliminate their significant contributions to downwind nonattainment''). Accordingly, the EPA's consideration of anticipated compliance timeframes for implementation of NO_X control strategies in selecting a future analytic year is not inconsistent with *North Carolina.*

Nor did the court speak to the timeframe for either analysis or compliance with respect to the ''interfere with maintenance'' clause of the good neighbor provision. While the D.C. Circuit held that the EPA must give independent meaning to that clause, the court made clear that this obligation applies to the EPA's identification of downwind air quality problems that must be addressed by upwind states. 531 F.3d at 909–11. The court did not speak to the timeframe by which upwind states should be required to implement emissions reductions to address such areas. On the contrary, the ambiguity in the good neighbor provision regarding the relationship of

[54] It is worth noting that the statutory text of CAA section 181(a) does not itself establish the attainment dates for the 2008 or 2015 ozone NAAQS. Rather, the EPA undertakes rulemakings to establish the appropriate deadlines after a new or revised ozone NAAQS is promulgated. *See, e.g.,* 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (March 6, 2015); 40 CFR 51.1103 and Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Final Rule, 83 FR 10380 (March 9, 2018); 40 CFR 51.1303.

upwind state emissions reductions to attainment dates is further heightened with respect to downwind areas that the EPA anticipates are likely to be in attainment in a future year, some of which may be currently attaining the standard (or even designated attainment) [55] but which may have problems maintaining the standard in the future. For example, in the EPA's 2017 air quality modeling performed for the CSAPR Update, the EPA identified six nonattainment receptors and thirteen maintenance receptors. 81 FR 74533. The maintenance receptors were areas that the EPA expected were likely to be in attainment based either on the modeling projections or current monitored data, but which the EPA expected may have problems maintaining attainment of the standard under certain circumstances. While many of the maintenance receptors were in areas designated nonattainment, the EPA's analysis suggests that these areas will be able to demonstrate (and in many cases had in fact demonstrated) attainment of the NAAQS by the attainment date or otherwise receive a clean data determination that relieves the state of further planning obligations.[56] While the good neighbor provision requires states to prohibit emissions that will ''interfere with maintenance'' of the NAAQS in these areas, there is no deadline for maintenance of the standard comparable to an attainment date for downwind areas that are designated as nonattainment for a specific standard.

Likewise, the court's decision in the *NRDC* case raised by the commenter addressed only the limitations on the EPA's authority to set attainment dates for new or revised ozone NAAQS applicable to designated nonattainment areas. The court did not speak to the requirements imposed under the good neighbor provision or the applicability of the attainment dates in subpart 2 to any emissions reductions required under that provision in upwind states.

Regarding the EPA's selection of 2023 as the appropriate future analytic year in the Determination Rule, one commenter characterizes the EPA's determination that installing sector- or region-wide controls on non-EGU sources could be 4 years or more to be a ''speculative and unsupported assumption.'' The commenter asserts that the EPA could have, but did not, examine the status of controls installed at the identified non-EGU sources and did not consider the specific timeframes needed for the installation of any additional controls, should they be required.

The EPA disagrees with the commenter's assertions related to the timeframe for the installation of controls at non-EGU sources identified in New York's petition. First, as noted previously, the EPA is relying on the 2023 modeling in this final action as the best available future-year data in the absence of any such data provided by the petitioner. Commenters had an opportunity to comment on the choice of the EPA's selected 2023 modeling year in the Determination Rule, which is already the subject of review in the D.C. Circuit. Thus, any comments regarding the bases for the EPA's selection of a 2023 analytic year in the Determination Rule (or in the EPA's similar action on Kentucky's SIP) are outside the scope of this action. Nonetheless, commenters here have not explained their assertion that the EPA's conclusions regarding the installation time for controls at non-EGUs are unsupported or indicated the type of information they believe is lacking to support those conclusions; thus, their allegation that the conclusions are ''speculative'' is conclusory and unfounded. The EPA further disagrees that it had any obligation to further investigate the status of non-EGU controls in acting on New York's petition. As discussed in Section III.C, the petitioner bears the burden of demonstrating that the finding sought in the petition is technically and analytically justified. The fact that the EPA has chosen to consider modeling data already available to further evaluate New York's petition does not shift the burden to the EPA to conduct yet further analysis where it was not provided by the petition.

Moreover, the commenters fail to acknowledge that the EPA's preliminary estimates of installation times did not capture all factors influencing the time needed to full implement controls at non-EGUs. As noted earlier in this section, preliminary estimates for the implementation of some potential control technologies on non-EGUs only account for the time between bid evaluation and startup but do not account for additional considerations such as pre-bid evaluation studies, permitting, and installation of monitoring equipment. Further, the EPA's preliminary estimates for implementing control technologies at non-EGU facilities do not account for the time and resources needed to install such technologies on a sector- or region-wide basis. Thus, the EPA has no reason to reconsider the installation timeframe for controls at non-EGUs identified in the Determination Rule, much less shorten that timeframe as suggested by the commenters.

Commenters further claim that the EPA's reliance on 2023, a date 4 years in the future, is inconsistent with the maximum 3-year period for remedies permitted under CAA section 126(c). Commenters point to the EPA's own statements in a prior CAA section 126 action that CAA section 126(c) establishes a maximum 3-year period for implementation of controls regardless of ''the timing of attainment needs downwind.'' 64 FR at 28279.

The EPA disagrees with commenters' contention that the 3-year deadline for implementing a remedy under CAA section 126(c) suggests that the consideration of modeling data from a 2023 analytic year for purposes of evaluating New York's CAA section 126(b) petitions is inappropriate. As noted earlier, the EPA is considering the 2023 modeling data as the best available data regarding expected air quality in New York in any future year, in the absence of any analysis of future air quality for any other year provided by either the petition or commenters. Thus, although 2023 is beyond the 3 years provided for implementation of emissions limits under CAA section 126(c), the data help inform whether there may be an air quality problem relative to either the 2008 or 2015 ozone NAAQS going forward.

Moreover, the choice of 2023 as an analytic year does not preclude the implementation of a remedy in an earlier year, including within the 3-year deadline specified under CAA section 126(c), if the EPA identifies a future air quality problem and the necessary finding is made as to any sources named in New York's petition. However while CAA section 126 contemplates that a source or group of sources may be found to have interstate transport impacts, it cannot be determined whether such source or sources are in violation of the good neighbor provision and whether controls are justified without analyzing emissions from a range of sources influencing regional-scale ozone transport, including sources not named in the petitions. Analysis of a future year thus ensures that any emissions reductions the EPA may require under that provision are not in excess of what would be necessary to address

[55] For example, in the CSAPR Update, two maintenance receptors (in Allegan County, Michigan, and Jefferson County, Kentucky) were located in areas designated attainment for the 2008 ozone NAAQS. 40 CFR 81.318 (Kentucky), 81.323 (Michigan).

[56] *See, e.g.,* 80 FR 30941 (June 1, 2015) (determination of attainment of Baltimore, MD (Harford receptor)); 81 FR 26697 (May 4, 2016) (determination of attainment by the attainment date of Cincinnati-Hamilton OH-KY-IN (Hamilton receptor)).

downwind nonattainment and maintenance problems as they exist by the time any emissions limitations would be implemented. Thus, although the 2023 modeling does not necessarily align with the year in which emissions limitations might be implemented under CAA section 126(c), were the EPA to make a CAA section 126(b) finding, it represents the best available data regarding future ozone concentrations in New York. Therefore, the EPA's reasonable choice to rely on its existing 2023 air quality modeling for evaluating air quality does not conflict with CAA section 126(c), nor does it preclude implementation of a remedy at an earlier date if the requisite air quality impact is found.

Several commenters assert that the EPA cannot rely on the 2023 modeling to evaluate good neighbor obligations because it relies on unenforceable assumptions about sources' voluntary behavior. One commenter notes, for example, that the EPA relies on plant retirements and fuel switches to natural gas electricity generation, without any permit requirements or other emissions limits in place to ensure such changes remain in place in 2023. Commenters explain that SIPs are required to demonstrate compliance with a federal standard consistent with the attainment deadline and contain adopted control measures with enforceable emissions limits. By using projected emissions reductions that are not bound by enforceable measures in its step 1 analysis, the EPA holds itself to a different standard, allowing projected emissions reductions to stand in for actual enforceable reductions.

The EPA does not agree that its reliance on the 2023 modeling data is inappropriate or unreliable, even if it includes assumptions regarding likely future operating conditions at the sources. Rather, as explained below, the modeling provides a reasonable and likely conservative estimate of emissions and ozone concentrations in 2023, and thus it is both reasonable and consistent with the statute for the EPA to rely on the modeling in evaluating the claims in New York's petition.

The EPA disagrees that reliance on the 2023 modeling is inconsistent with the statutory requirements of the good neighbor provision because the modeling reflects emissions reductions that may not be subject to enforceable measures. The good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. The EPA has therefore interpreted the requirements of the good neighbor provision, and the elements of its four-step interstate transport framework, to apply in a manner consistent with the designation and planning requirements in title I that apply in downwind states. *See North Carolina,* 531 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I). The EPA notes that this consistency instruction follows the requirement in the good neighbor provision that plans ''contain adequate provisions prohibiting'' certain emissions. The following paragraphs will therefore explain the EPA's interpretation of the circumstances under which the good neighbor provision requires that plans ''prohibit'' emissions through enforceable measures and show that this interpretation is consistent with the circumstances under which downwind states are required to implement emissions control measures in nonattainment areas.

For purposes of this analysis, the EPA notes specific aspects of the title I designations process and attainment planning requirements for the ozone NAAQS that provide relevant context for evaluating the consistency of the EPA's approach to implementing the good neighbor provision in upwind states. This discussion is not intended to suggest that the specific requirements of designations and attainment planning for downwind states apply to upwind states pursuant to the good neighbor provision, but rather to explain why the EPA's approach to interpreting the good neighbor provision is reasonable in light of relevant, analogous provisions found elsewhere in title I. *Cf. EDF* v. *EPA,* 82 F.3d 451, 457 (D.C. Cir. 1996) (per curiam) (describing the phrase ''consistent with'' as ''flexible statutory language'' which does not require ''exact correspondence . . . but only congruity or compatibility,'' thus requiring a court to defer to reasonable Agency determinations), *amended by* 92 F.3d 1209 (D.C. Cir. 1996). These provisions demonstrate that the EPA's good neighbor approach is consistent with other relevant provisions of title I with respect to what data are considered in the EPA's analysis and when states are required to implement enforceable measures.

First, areas are initially designated attainment or nonattainment for the ozone NAAQS based on actual measured ozone concentrations. *See* CAA section 107(d), 42 U.S.C. 7407(d) (noting that an area shall be designated attainment where it ''meets'' the NAAQS and nonattainment where it ''does not meet'' the NAAQS (including certain ''nearby'' areas, as explained below)). If an area measures a violation of the relevant ozone NAAQS, then the area is generally designated nonattainment, regardless of what specific factors have influenced the measured ozone concentrations or whether such levels are due to enforceable emissions limits. In such cases where the an ozone nonattainment area is classified as Moderate or higher, the state is then required to develop an attainment plan, which generally includes the application of various enforceable control measures to sources of emissions located in the nonattainment area, consistent with the requirements in Part D of title I of the Act.[57] *See generally* CAA section 182, 42 U.S.C. 7511a. If, however, an area measures compliance with the ozone NAAQS, the area is designated attainment (unless it is included in the boundaries of a nearby nonattainment area due to its contribution to that area's nonattainment, as discussed below), and sources in that area generally are not subject to any new enforceable control measures under Part D.[58]

In determining the boundaries of an ozone nonattainment area, the CAA requires the EPA to consider whether ''nearby'' areas ''contribute'' to ambient air quality in the area that does not meet the NAAQS. 42 U.S.C. 7407(d). For each monitor or group of monitors indicating a violation of the ozone NAAQS, the EPA assesses information related to various factors, including current emissions and emissions-related data from the areas near the monitor(s), for the purpose of establishing the appropriate geographic boundaries for the designated ozone nonattainment areas. A nearby area may be included within the boundary of the ozone nonattainment area only after assessing area-specific information, including an assessment of whether current emissions from that area contribute to the air quality problem identified at the violating monitor.[59] If such a

[57] Areas classified as Marginal nonattainment areas are required to submit emissions inventories and implement a nonattainment new source review permitting program but are not generally required to implement controls at existing sources. *See* CAA section 182(a), 42 U.S.C. 7511a(a).

[58] CAA section 184 contains the exception to this general rule: States that are part of the Ozone Transport Region are required to provide SIPs that include specific enforceable control measures, similar to those for nonattainment areas, that apply to the whole state, even for areas designated attainment for the ozone NAAQS. *See generally* 42 U.S.C. 7511c.

[59] *See* Attachment 2 to *Area Designations for the 2008 Ozone National Ambient Air Quality Standards.* Memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, U.S. EPA to Regional Administrators. December 4, 2008.

Continued

determination is made, sources in the nearby area are also subject to the applicable Part D control requirements. However, if the EPA determines that the nearby area does not contribute to the measured nonattainment problem, then the nearby area is not part of the designated nonattainment area and sources in that area are not subject to such control requirements.

The EPA's historical approach to addressing the good neighbor provision via the four-step interstate transport framework, and the approach the EPA continues to apply here, is consistent with title I requirements. That is, in steps 1 and 2 of the framework, the EPA (at step 1) evaluates whether there is a downwind air quality problem (either nonattainment or maintenance), and (at step 2) whether an upwind state impacts the downwind area such that it contributes to and is therefore ''linked'' to the downwind area. A determination by the EPA at step 1 of the good neighbor analysis (that it has not identified any downwind air quality problems to which an upwind state could contribute) is analogous to the EPA's determination in the designation analysis that an area should be designated attainment. Similarly, a determination at step 2 of the good neighbor analysis (that, although there are downwind air quality problems, an upwind state does not sufficiently impact the downwind area such that the state contributes to that area's air quality problems and is therefore linked to that area) is analogous to the EPA's determination in the designation analysis that a nearby area does not contribute to a NAAQS violation in another area. Under the good neighbor provision, the EPA can determine at either step 1 or 2, as appropriate, that the upwind state will not contribute to air quality problems in downwind areas and, thus, that the upwind state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. *See, e.g.,* CSAPR Update, 81 FR 74506 (determining that emissions from 14 states do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS); CSAPR, 76 FR 48236 (finding that states whose impacts on downwind receptors are below the air quality threshold do not significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS). Under such circumstances, sources in the upwind state are not required to implement any control measures under the good neighbor provision, which is analogous to the fact that under the designation and attainment regime, sources located in areas that are designated attainment (because the area is attaining the NAAQS and not contributing to any nearby nonattainment areas) generally are not required to implement the control measures found in Part D of the Act. *Cf. EME Homer City II,* 795 F.3d at 130 (determining that CSAPR ozone-season NO_X budgets for 10 states were invalid based on determination that modeling showed no future air quality problems); CSAPR Update, 81 FR 74523–24 (removing three states from CSAPR ozone season NO_X program based on determination that states are not linked to any remaining air quality problems for the 1997 ozone NAAQS).

The EPA acknowledges one distinction between the good neighbor and designation analyses: The good neighbor analysis relies on *future-year* projections of emissions to calculate ozone concentrations and upwind state contributions, compared to the use of *current* measured data in the designations analysis. As described in more detail in Section III.C, this approach is a reasonable interpretation of the term ''will'' in the good neighbor provision, *see North Carolina,* 531 F.3d at 913–14, and interpreting language specific to that provision does not create an impermissible inconsistency with other provisions of title I. Moreover, the EPA's approach to conducting future-year modeling in the good neighbor analysis to identify downwind air quality problems and linked states is consistent with its use of current measured data in the designations process. The EPA's future-year air quality projections consider a variety of factors, including current emissions data, anticipated future control measures, economic market influences, and meteorology. Some of these factors (*e.g.,* emissions data, and meteorology) can affect the NO_X emissions levels and consequent measured ozone concentrations that inform the designations process. Like the factors that affect measured ozone concentrations used in the designations process, not all of the factors influencing the EPA's modeling projections are or can be subject to enforceable limitations on emissions or ozone concentrations. However, the EPA believes that considering these factors contributes to a reasonable estimate of anticipated future ozone concentrations. *See EME Homer City II,* 795 F.3d at 135 (declining to invalidate the EPA's modeling projections ''solely because there might be discrepancies between those predictions and the real world''); *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (D.C. Cir. 1994) (''a model is meant to simplify reality in order to make it tractable''). Thus, the EPA's consideration of these factors in its future-year modeling projections used at steps 1 and 2 of the four-step interstate transport framework is reasonable and consistent with the use of measured data in the designation analysis.[60]

The EPA notes that there is a further distinction between the CAA section 107(d) designations provision and the CAA section 110(a)(2)(D)(i) good neighbor provision in that the latter provision uses different terms to describe the threshold for determining whether emissions in an upwind state should be regulated (''contribute significantly'') as compared to the standard within the designations process for evaluating whether an area ''contributes'' to a violation in a nearby area. Thus, at step 3 of the good neighbor analysis the EPA evaluates additional factors, including cost and air quality considerations, to determine whether emissions from a linked upwind state would violate the good neighbor provision. Only if the EPA at step 3 determines that the upwind state's emissions would violate the good neighbor provision will it proceed to step 4 to require control of emissions in the upwind state to address the identified violation. This approach to steps 3 and 4 is analogous to the trigger for the application of Part D control requirements to sources upon designation of an area to nonattainment. Thus, the EPA reasonably interprets the good neighbor provision to not require it or the upwind state to proceed to step 4 and implement any enforceable measures to ''prohibit'' emissions unless it identifies a violation of the provision at step 3. *See, e.g.,* 76 FR 48262 (finding at step 3 that the District of Columbia is not violating the good neighbor

Available at *https://archive.epa.gov/ozonedesignations/web/pdf/area_designations_for_the_2008_revised_ozone_naaqs.pdf* and Attachment 3 to *Area Designations for the 2015 Ozone National Ambient Air Quality Standards.* Memorandum from Janet G. McCabe, Acting Assistant Administrator, U.S. EPA to Regional Administrators. February 25, 2016. Available at *https://www.epa.gov/sites/production/files/2016-02/documents/ozone-designations-guidance-2015.pdf.*

[60] The EPA notes that the consideration of projected *actual* emissions in the future analytic year—as opposed to *allowable* levels—is also consistent with the statute's instruction that states in their SIPs (or the EPA when promulgating a FIP) prohibit emissions that ''will'' impermissibly impact downwind air quality. This term is reasonably interpreted to mean that the EPA should evaluate anticipated actual emissions (based on what sources *will* emit) rather than potential emissions (based on what sources *could* emit).

provision, and therefore will not at step 4 be subject to any control requirements in CSAPR, because no cost-effective emissions reduction opportunities were identified in the District).

The EPA further disagrees with the commenters' assertion that the incorporation of announced retirements and fuel switches into the 2023 projections makes the modeling data unreliable. Rather with respect to EGU NO_X emissions, the EPA's 2023 projections likely reflect a more conservative (*i.e.,* higher) NO_X emissions estimate than comparable alternative methods for projecting future EGU emissions. The EPA's 2023 EGU emissions projections used reported 2016 data, adjusting that data based only on currently known changes in the power sector and a change in emissions rate to reflect implementation of the CSAPR Update after 2017. As such, the EPA's approach does not account for changes that would be estimated to occur due to economic and other environmental policy factors. Trends in historic emissions data and emissions projections using a variety of methods and models suggest that inclusion of these factors would likely further reduce future NO_X emissions projections.

Several commenters further assert that, because the EPA is actively working to undo several major rules that underpin the 2023 modeling results (*e.g.,* the Glider Rule (82 FR 53442 (November 16, 2017)) and the Corporate Average Fuel Economy (CAFE) Standards (83 FR 42986 (August 24, 2018))), the assumptions that underpin the EPA's 2023 modeling are inaccurate. One commenter specifically notes that, even in the absence of a rule change, the EPA announced formal policy to not enforce the existing Glider Rule.

The EPA disagrees that its 2023 projections are unreliable because of potential changes to other regulations. The EPA first notes that the Agency has not finalized any potential regulatory changes to the Glider Rule, the CAFE Standards for light duty vehicles, or the oil and gas Control Technique Guidelines (CTG). In general, the mobile source and non-EGU emissions inventories do not reflect rulemakings finalized in calendar year 2016 or later, nor do they reflect any rules proposed but not yet finalized since 2016, as only finalized rules are reflected in modeling inventories. The EPA's normal practice is to only include changes in emissions from final regulatory actions in its modeling because, until such rules are finalized, any potential changes in NO_X or VOC emissions are speculative.

In addition, even if emissions were to change as a result of any such final rules, commenters have not indicated how these additional emissions would affect downwind ozone concentrations Regarding one commenter's assertion about the EPA's formal policy to not enforce the existing Glider Rule, the EPA notes that its conditional no action assurance of non-enforcement of the existing rule was withdrawn by the Agency on July 26, 2018.[61] The withdrawal notice removes any question that current requirements are enforceable and enforcement actions may be undertaken on a case-by-case basis in the Agency's discretion. Therefore, assumptions relating to the Glider Rule as part of the 2023 modeling remain reasonable.

The next two sections discuss the EPA's evaluation of and conclusions regarding the petition's step 1 analysis for Chautauqua County and the NYMA with respect to both the 2008 and 2015 ozone NAAQS.

Chautauqua County

First, with respect to the 2008 and 2015 ozone NAAQS in Chautauqua County, the EPA is finalizing its conclusion that New York's petition does not provide sufficient information to indicate that there is a current or expected future air quality problem (with respect to either nonattainment or maintenance) in the county with respect to either the 2008 or the 2015 ozone NAAQS. Although the petition correctly indicates that the EPA previously designated Chautauqua County as Marginal nonattainment under the 2008 ozone NAAQS, the area attained the 2008 ozone NAAQS by the relevant attainment date.[62] In addition, the county was designated attainment for the more stringent 2015 standard.[63] The petition did not demonstrate that there is either a present air quality problem or that there will be a future nonattainment or maintenance problem in that area for either NAAQS that must be addressed under the good neighbor provision. While a prior designation of an area as nonattainment may provide useful information for purposes of analyzing interstate transport under the good neighbor provision, designations themselves are not dispositive of whether a downwind area will have an air quality problem in the future.[64] As discussed earlier, the EPA evaluates downwind ozone air quality problems for purposes of step 1 of the four-step interstate transport framework using observed and modeled air quality concentrations for a future analytic year that considers the relevant attainment deadlines for the NAAQS and the anticipated compliance timeframe for potential control strategies.[65] New York's CAA section 126(b) petition does not include analyses or air quality projections indicating that Chautauqua County may be violating or have difficulty maintaining the 2008 or 2015 ozone NAAQS either currently or in a relevant future analytic year. In fact, the petition acknowledges that this area attained the 2008 ozone NAAQS by the relevant attainment date. The petition alleges that the area remains in danger of exceeding the ozone NAAQS but does not provide any evidence to support this assertion. Thus, the petition has not established that emissions from the named sources are linked to a nonattainment or maintenance problem in Chautauqua County.

While the EPA finds that New York's petition does not on its own merit adequately establish the presence of a current or future nonattainment or maintenance problem in Chautauqua County, the EPA also used currently available air quality data to support an independent analysis of step 1 of the four-step interstate transport framework to assess whether Chautauqua County will have an air quality problem relative to either the 2008 or the 2015 ozone NAAQS. First, both the 2015–2017 and the 2016–2018 design values in Chautauqua County are 68 ppb, which is below the levels of both the 2008 and

[61] "Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," Andrew R. Wheeler, Acting Administrator, July 26, 2018. Available at *https://www.epa.gov/sites/production/files/2018-07/documents/memo_re_withdrawal_of_conditional_naa_regarding_small_manufacturers_of_glider_vehicles_07-26-2018.pdf.*

[62] *See* Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, Final Rule, 77 FR 30137 (May 21, 2012); Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Jamestown, New York Marginal Nonattainment Area, 83 FR 49492 (October 2, 2018).

[63] *See* Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, Final Rule, 82 FR 54264 (November 16, 2017).

[64] The EPA has consistently taken the position that CAA section 110(a)(2)(D)(i)(I) refers to prevention of "nonattainment" in any area in another state, not only in designated nonattainment areas. *See, e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (August 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (November 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 SO_2 NAAQS prior to issuance of designations for that standard).

[65] 81 FR 74517.

2015 ozone NAAQS of 75 ppb and 70 ppb, respectively.[66]

Additionally, the EPA's recent air quality modeling described previously indicates that the monitor in Chautauqua County is expected to continue to both attain and maintain both standards in 2023, with an average 2023 design value of 58.5 ppb and a maximum 2023 design value of 60.7 ppb.[67] Accordingly, the EPA has no basis to conclude that any of the sources named in the New York petition are linked to a downwind air quality problem in Chautauqua County with regard to the 2008 or the 2015 ozone NAAQS. In the absence of a downwind air quality problem, the EPA has no authority to regulate upwind sources to address air quality in Chautauqua County with respect to the 2008 or the 2015 ozone NAAQS.

One commenter asserts that New York demonstrated, by providing current, sometimes violating air quality data, that Chautauqua County is not attaining the 2008 or 2015 ozone standards. Specifically, the commenter notes that New York provided evidence demonstrating that the air quality monitor in Dunkirk, New York, located in Chautauqua County, sometimes exceeds the 2008 and the 2015 ozone standard with design values sometimes reaching 82 ppb.

The EPA disagrees that the example cited by the commenter provides evidence of either a current or future nonattainment or maintenance problem in Chautauqua County. As previously indicated, the EPA evaluates downwind ozone air quality problems using observed and modeled future air quality concentrations. The individual exceedances identified by the commenter do not indicate that the area is currently in violation of the NAAQS. Appendices P and U to 40 CFR part 50 specify the methodologies for calculating the ozone design values for the 2008 and 2015 ozone NAAQS, respectively, and both are calculated as the 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentration. As noted above, both the 2015–2017 and the 2016–2018 design values in Chautauqua County, which are calculated consistent with these methodologies, demonstrate compliance with both the 2008 and 2015 ozone NAAQS. While an individual monitor (*e.g.,* the Dunkirk monitor) may record individual exceedances of the NAAQS, such as the 82 ppb value cited by the commenter, an individual exceedance does not constitute a violating ''design value,'' which is the value used for identifying violations and determining attainment status for regulatory purposes.

New York Metropolitan Area

Second, with respect to the 2008 ozone NAAQS in the NYMA, the EPA is finalizing its conclusion that the petition does not provide sufficient information to indicate that the NYMA should be considered a nonattainment or maintenance receptor pursuant to the good neighbor provision. As described in Section I.B of this notification, the petition correctly asserts that the NYMA was designated nonattainment for the 2008 ozone NAAQS and has failed to attain the NAAQS by the attainment deadline. Additionally, the petition points to preliminary 2015–2017 air quality data (and commenters point to more current final 2015–2017 design values available after New York submitted its petition) indicating that some monitoring sites in the NYMA are above the 2008 NAAQS. The EPA notes in this regard that the 2016–2018 design values for the NYMA monitoring sites located in New York (and those in New Jersey) are attaining the 2008 NAAQS. Although some of the NYMA monitors located in Connecticut are above the 2008 NAAQS,[68] the EPA has interpreted CAA section 126(b)'s petition authority as limited to states and political subdivisions seeking to address interstate transport of pollution impacting downwind receptors within their geographical borders. *See* 83 FR 50460.

As noted in the proposal, an area's current attainment status alone is insufficient evidence regarding whether there ''will'' be a nonattainment or maintenance problem that must be addressed under either the good neighbor provision or CAA section 126. Rather, as discussed in Section IV.B of the proposal, the EPA evaluates whether there will be downwind nonattainment or maintenance concerns in each area with respect to each NAAQS under the good neighbor provision (and, thus, also under CAA section 126(b)) using observed and modeled future air quality concentrations for a relevant future analytic year. 84 FR 22799.

Further, the EPA has additional information related to potential projected nonattainment or maintenance problems in the NYMA. The EPA's recent air quality projections for 2023, based on the latest available emissions inventory, indicate that all monitoring sites in the NYMA will attain and maintain the 2008 ozone NAAQS. As discussed in Section II.C.2 of this notification, in the Determination Rule, the EPA determined based on this data that the CSAPR Update fully addresses the good neighbor provision requirements for the 2008 ozone NAAQS for all states previously addressed in that rule. This analysis indicates that all remaining receptors for the 2008 ozone NAAQS identified in the CSAPR Update, including those in the NYMA, are expected to attain and maintain that NAAQS in 2023 under step 1 of the four-step interstate transport framework, and, therefore, upwind states have no remaining obligations under the good neighbor provision. New York has not provided any new information that contradicts the EPA's conclusion in the Determination Rule that the NYMA will no longer have an air quality problem in the future.

Therefore, the EPA is finalizing its decision to deny New York's petition regarding the 2008 ozone NAAQS in the NYMA because New York has not demonstrated that there will be a nonattainment or maintenance problem in the NYMA in a relevant future year and the EPA's own analysis projects that there will be no air quality problems under step 1. As such, the EPA has no authority to regulate upwind sources to address air quality in the NYMA with respect to the 2008 ozone NAAQS.

Regarding the 2015 ozone NAAQS, based on the EPA's 2023 air quality modeling, the EPA has identified a relevant downwind air quality problem in the NYMA. The EPA's projections indicate that the average design value for five of the six monitoring sites in the NYMA and the maximum design values at all six monitoring sites in the NYMA will be above the 2015 ozone NAAQS in 2023.[69] Therefore, although New York did not evaluate whether there will be an air quality problem with respect to the 2015 ozone NAAQS in a future year, the EPA's independent analysis of step 1 of the interstate transport framework

[66] The 2015–2017 and 2016–2018 design value for Chautauqua County in the ''Jamestown-Dunkirk-Fredonia, NY CBSA'' at AQS site 360130006 is 68 ppb. Available at *https://www.epa.gov/sites/production/files/2019-07/ozone_designvalues_20162018_final_06_28_19.xlsx.*

[67] *See* 2023 design values for AQS site 360130006 in spreadsheet released with the EPA's March 2018 memorandum. Available at *https://www.epa.gov/sites/production/files/2018-05/updated_2023_modeling_dvs_collective_contributions.xlsx.*

[68] *See* 2016–2018 ozone design value report available at *https://www.epa.gov/sites/production/files/2019-07/ozone_designvalues_20162018_final_06_28_19.xlsx.*

[69] The EPA also notes that four of the six monitoring sites are in the State of Connecticut and two monitoring sites are in New York. Therefore, the EPA's determination as to the 2015 ozone NAAQS with respect to step 1 of the framework is only pertinent as to the New York monitoring sites.

indicates that the NYMA is projected to have a downwind air quality problem relative to the 2015 NAAQS. Thus, the EPA is not denying this portion of the petition with respect to step 1 (but is denying the petition for other reasons described elsewhere).

One commenter asserts that New York demonstrated that the NYMA is not attaining the 2008 or 2015 ozone standards. Specifically, the commenter notes that certified monitoring data through 2016 and data from 2017 indicate that the NYMA did not attain the Moderate attainment deadline of July 20, 2018, for the 2008 standard. The commenter also identifies data from the 2017 Design Value Report, which demonstrates that the NYMA registered a 2015–2017 design value of 83 ppb, which significantly exceeds both the 2008 ozone standard of 75 ppb and the 2015 ozone standard of 70 ppb. The commenter further notes that the EPA has designated the NYMA as a Moderate nonattainment area for the 2015 ozone standard. The commenter further cites the 2015 Ozone NAAQS Interstate Transport Assessment Design Values and Contributions Report, which projects that a monitor in New York County will exceed the 2015 ozone standard of 70 ppb with an average design value of 74.4 ppb and a maximum design value of 75.5 ppb in 2023. The report also projects that a monitor in Queens County will have a maximum design value of 72.0 ppb in 2023, which exceeds the 2015 ozone standard of 70 ppb.

The EPA disagrees with the commenter's assertions regarding the status of New York monitors relative to the 2008 ozone NAAQS. As discussed earlier in this notification, regarding current air quality, the 2016–2018 design values for the NYMA monitoring sites located in New York (and those in New Jersey) are attaining the 2008 NAAQS. The design value of 83 ppb cited by the commenter reflects inclusion of the Connecticut monitors, but the EPA does not agree that such information is relevant to a petition submitted by New York.[70] The specific language of CAA section 126(b) does not say that a state may petition the EPA for a finding that emissions from a source, or group of sources, is impacting downwind receptors in a state other than the petitioning state. Rather, the legislative history for this provision suggests the provision was meant to address adverse air impacts only in the petitioning state.[71] Given the broader context of CAA section 126, the EPA reasonably interprets CAA section 126(b)'s petition authority to be limited to states and political subdivisions seeking to address interstate transport of pollution impacting downwind receptors within their geographical borders.

Further, the EPA's recent air quality projections for 2023, based on the latest available emissions inventory, indicate that all monitoring sites in the NYMA will attain and maintain the 2008 ozone NAAQS. Accordingly, regardless of the current measured data, the EPA does not have a basis to conclude that the NYMA will have an air quality problem with respect to the 2008 ozone NAAQS in a relevant future year that would justify a finding under CAA section 126(b).

2. The EPA's Evaluation of New York's Petition Considering Step 2

With respect to step 2 of the four-step interstate transport framework, the EPA evaluated New York's petition and determined that neither the information in the petition nor existing information available to the EPA indicates there will be downwind nonattainment or maintenance concerns in Chautauqua County with respect to the 2008 and 2015 ozone NAAQS, or in the NYMA with respect to the 2008 ozone NAAQS. For these reasons, the EPA has no basis to proceed to consider whether there is a linkage at step 2 of the four-step interstate transport framework between the named upwind states and these downwind areas regarding the respective NAAQS.

As previously noted, regarding the 2015 ozone NAAQS, the EPA has identified a relevant downwind air quality problem in the NYMA. The EPA's recent 2023 air quality modeling supports an assessment that emissions from at least some of the States named in the petition are linked to a downwind air quality problem at step 2. As the following paragraphs explain, the linkages between upwind and downwind states are further informed by an air quality screening threshold.

Historically, at step 2, the EPA has used an air quality screening threshold to determine whether a state contributes to a downwind air quality problem in amounts that warrant further evaluation as part of a multi-factor analysis in step 3. Upwind states that impact a downwind receptor by less than the screening threshold do not significantly contribute or interfere with maintenance of the NAAQS in the downwind area at step 2. The EPA has therefore previously determined, without conducting any additional analysis at step 3, that such states do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS under the good neighbor provision. Upwind states that the EPA finds under the step 2 analysis impact a downwind receptor at or above the threshold are identified as contributing to a projected downwind air quality problem (*i.e.,* they are said to be ''linked'' to that downwind receptor) and require additional analysis to determine if the contribution is ''significant'' or ''interferes with maintenance.'' The EPA then proceeds to the multi-factor step 3 analysis to determine what, if any, of the emissions from the linked upwind state significantly contribute to nonattainment or interfere with maintenance of the NAAQS at the downwind receptor(s).[72]

In previous federal actions,[73] the EPA's analysis of the sum of contributions from all linked upwind states (*i.e.,* collective contribution)

[70] As noted earlier in this notification, the design value is the 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentration. To be comparable to the 2008 ozone NAAQS, the design value must be valid according to Appendix P to 40 CFR part 50, which specifies minimum data completeness criteria. The design value listed for each area is the highest among monitors with valid design values. For the NYMA, the highest reading monitor is in Connecticut, not New York. The EPA interprets CAA section 126(b)'s petition authority to be limited to states and political subdivisions seeking to address interstate transport of pollution impacting downwind receptors within their geographical borders. Therefore, the Connecticut monitoring site is excluded from the scope of this petition.

[71] When section 126 was added to the CAA, the Senate's amendment implementing the basic prohibition on interstate pollution stated that: ''Any State or political subdivision may petition the Administrator for a finding that a major stationary source in another state emits pollutants which would adversely affect the air quality in the *petitioning* State.'' (emphasis added). Clean Air Act Amendments of 1977, H.R. 95–564, 95th Cong. at 526 (1977). The House concurred with the Senate's amendment to CAA section 126, with changes to other portions of the amendment, but did not indicate changes to this sentence. *Id.* The lack of stated changes to this component of the Senate's original amendment suggest that Congress did not intend for the scope of the petitioning authority to be expanded to parties other than a state or political division in which downwind air quality is adversely affected.

[72] Note that upwind states that are linked to a downwind receptor at step 2 may nevertheless be found to not significantly contribute to nonattainment or interfere with maintenance at the receptor depending on the outcome of the step 3 analysis.

[73] In the Cross-State Air Pollution Rule (CSAPR), the EPA used 0.80 parts per billion (ppb) as the threshold, which is 1 percent of the 1997 ozone NAAQS. 76 FR 48208, 48238 (August 8, 2011). Most recently, in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), the EPA used 0.75 ppb as the threshold, which is 1 percent of the 2008 ozone NAAQS. 81 FR 74504, 74518 (October 26, 2016).

concluded that a screening threshold equivalent to 1 percent of the 1997 and 2008 ozone NAAQS was appropriate at step 2. In an August 31, 2018, memorandum, the EPA presented the results of an analysis of collective contribution for the 2015 ozone NAAQS [74] using data drawn from the results of the EPA's updated 2023 modeling.[75] This analysis, which considered the same factors as the thresholds analyses conducted in both the CSAPR and CSAPR Update rulemakings,[76] [77] included the evaluation of data pertinent to several potential thresholds (*i.e.,* 1 percent of the 2015 ozone NAAQS or 0.70 ppb, 1 ppb and 2 ppb) that could be applicable to the development of SIP revisions to address the 2015 ozone NAAQS of 70 ppb. The EPA ultimately suggested in this memorandum that a threshold of 1 ppb may be appropriate for states to use to develop SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.

In addition to the 2023 modeling used to identify potential downwind air quality problems described in the prior section, the EPA has also performed state-level ozone source apportionment modeling to provide information regarding the expected contribution of statewide, anthropogenic NO_X and VOC emissions in each state to projected 2023 ozone concentrations. If the EPA applies a 1 percent threshold like that used in prior rulemakings (*e.g.,* 0.70 ppb) to the results of the contribution modeling, the EPA's analysis indicates that all nine upwind states named in the petition are linked to an air quality problem in the NYMA for the 2015 ozone NAAQS. If the EPA instead applies the alternative 1 ppb threshold, the EPA's analysis indicates that the emissions from six (*i.e.,* Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) of the nine states named in New York's petition are linked to an air quality problem in the NYMA for the 2015 ozone NAAQS, while three states (*i.e.,* Illinois, Indiana and Kentucky) are not.

Some commenters disagree with the EPA's guidance suggesting that states may use a 1 ppb threshold instead of a threshold equivalent to 1 percent of the NAAQS as the threshold to show a linkage between emissions from upwind states on air quality in downwind states. As explained in the proposal, the EPA's August 31, 2018, memorandum to states conveying the results of our analysis of collective contribution for the 2015 ozone NAAQS is guidance and not a regulation. It does not change or replace any legal requirements in the CAA or implementing regulations. At this time, the EPA has not engaged in a good neighbor rulemaking action for the 2015 ozone NAAQS that determines which of the potential thresholds (*e.g.,* 1 percent of the NAAQS (0.70 ppb) or 1 ppb) is appropriate for addressing collective contribution for the 2015 ozone NAAQS for purposes of New York's petition or for any other purposes. Additionally, as previously described, the EPA is also not here deciding an appropriate screening level that might be applied for future good neighbor analyses for the 2015 ozone NAAQS. The EPA is therefore not basing its denial of New York's petition on use of any particular threshold at step 2. Rather, the EPA acknowledges that emissions from at least some of the named upwind states are linked to projected air quality problems in the NYMA for the 2015 ozone NAAQS. Therefore, the EPA proceeds assuming, without deciding, that the named states are linked at step 2 and, as discussed in more detail in Section III.C.3 of this notification, the EPA has evaluated the sufficiency of the petition's demonstration with respect to step 3.

3. The EPA's Evaluation of New York's Petition Considering Step 3

As described in Section II.C.1 of this notification, once an upwind state is linked to a downwind air quality problem at steps 1 and 2 of the four-step interstate transport framework, the next step is to identify the emissions reductions, if any, needed from particular sources to eliminate the upwind state's significant contribution to nonattainment and interference with maintenance of the NAAQS (*i.e.,* step 3 of the four-step interstate transport framework).[78] In the proposal at step 3, the EPA proposed to find that material elements in New York's analyses are technically deficient, such that the EPA cannot conclude that any source or group of sources in any of the named states will significantly contribute to nonattainment or interfere with maintenance in Chautauqua County or the NYMA relative to the 2008 and 2015 ozone NAAQS. Although the EPA already proposed to deny the petition as to Chautauqua County (for the 2008 and 2015 ozone NAAQS) and NYMA (for the 2008 ozone NAAQS) at step 1 of the four-step interstate transport framework, the EPA also proposed to rely on our assessment of step 3 as an additional and independent basis for denial as to the petition's claims for these areas with respect to both NAAQS. For the reasons discussed in this section, the EPA is finalizing its conclusion with respect to the adequacy of New York's petition at step 3.

Applying Step 3 of the Four-Step Interstate Transport Framework

As discussed in Section III.A of this notification, the EPA maintains that the four-step framework provides a logical, consistent and systematic approach for addressing interstate transport for a variety of criteria pollutants under a broad array of national, regional and local scenarios. The complexity of atmospheric chemistry and the nature of ozone transport also demonstrate the appropriateness of the four-step interstate transport framework particularly within step 3, where upwind sources are evaluated to determine whether they have emissions that significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS.

As discussed in Section II.C.1 of this notification, within step 3 of the four-step interstate transport framework, the EPA has historically considered several factors to determine whether sources in linked upwind states have emissions that will significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS. In particular, the EPA has generally considered various control, cost, and air quality factors and data, including: The types of control strategies that can be implemented at sources within the

[74] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards (August 31, 2018).

[75] Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (March 2018). *https://www.epa.gov/airmarkets/march-2018-memo-and-supplemental-information-regarding-interstate-transport-sips-2015.*

[76] Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update (August 2016). *https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-final-cross-state-air-pollution-rule.*

[77] Air Quality Modeling Final Rule Technical Support Document (for the Final Transport Rule now known as CSAPR; June 2011). *https://www.epa.gov/csapr/air-quality-modeling-final-rule-technical-support-document.*

[78] Contrary to New York's assertion in its petition, identification of a linkage between an upwind state and a downwind receptor does not conclude the determination regarding whether sources in the upwind state will significantly contribute to nonattainment or interfere with maintenance of the NAAQS. The conclusion that a state's emissions met or exceeded the threshold only indicated that further analysis was appropriate to determine *whether* any of the upwind state's emissions met the statutory criteria under the good neighbor provision. *See EME Homer City,* 572 U.S. at 501–03 (noting upwind states are only obliged to eliminate emissions meeting both the step 2 and 3 inquiries).

upwind states; the costs of implementing such control strategies; the amount of potential emissions reductions from implementation of control strategies at upwind sources; the potential downwind air quality improvements from such emissions reductions and the severity of the downwind air quality problem (*i.e.,* whether the air quality problem will be resolved through implementation of the emissions reductions). *See* CSAPR, Final Rule, 76 FR 48248–49 and 48254–55; CSAPR Update, Final Rule, 81 FR 74519; Ozone Transport Policy Analysis Final Rule TSD, p. 3 (Docket ID No. EPA–HQ–OAR–2015–0500). The EPA has typically considered these various cost and air quality factors in a multifactor analysis to identify the appropriate uniform level of emissions controls to apply to sources across a region of upwind states that are collectively linked to downwind air quality problems and, based on the selected level of control, to quantify the emissions (if any) from each upwind state that contribute significantly to nonattainment or interfere with maintenance in a downwind area.[79] The quantity of emissions identified in step 3 are then controlled through permanent and enforceable measures in step 4 of the four-step interstate transport framework. In these prior rules, the EPA has selected the level of control stringency deemed cost-effective, compared to other levels of control stringency considered in the analysis, when these factors are balanced together. Assessing multiple factors allows the EPA to consider the full range of circumstances and state-specific factors that affect the relationship between upwind emissions and downwind nonattainment and maintenance problems. For example, the EPA's assessment of cost considerations accounts for the existing level of controls at sources in upwind states as well as the potential for, and relative difficulty of, achieving additional emissions reductions. Additionally, assessment of the downwind air quality impacts from the potential upwind emissions reductions is essential to determining whether various levels of potential control stringency would under- or over-control upwind state emissions relative to the identified downwind air quality problems. The Supreme Court has found the EPA's approach to apportioning emissions reduction responsibility among multiple upwind states under these circumstances to be ''an efficient and equitable solution to the allocation problem'' presented by the good neighbor provision for regional problems like the transport of ozone pollution. *EME Homer City,* 572 U.S. at 519. As discussed extensively in this action, the good neighbor provision and CAA section 126(b) petitions are closely textually and analytically linked to one another, supporting the EPA's view that the considerations set forth above are appropriate for the EPA's analysis of such petitions.

Several commenters assert that it is inappropriate for the EPA to consider cost-effectiveness in evaluating CAA section 126(b) petitions, because they contend the statute does not contemplate consideration of cost-effectiveness in making findings.

The EPA disagrees that is inappropriate for the EPA to consider cost-effectiveness in evaluating CAA section 126(b) petitions. As further described in Section II.B, the EPA believes it is appropriate to interpret ''contribute significantly to nonattainment'' and ''interfere with maintenance'' as meaning the same thing under both CAA sections 110(a)(2)(D)(i)(I) and 126(b) because, while these two provisions provide independent regulatory processes, they are also closely linked in that they both address the interstate transport of emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS. Importantly, CAA section 126(b) provides no independent standard for determining whether violations exist, but instead directly incorporates the CAA section 110(a)(2)(D)(i)(I) standard. Accordingly, the EPA's decision whether to grant or deny a CAA section 126(b) petition regarding both the 2008 and 2015 ozone NAAQS depends on application of the four-step interstate transport framework used to interpret CAA section 110, further described in Section II.C.1, which includes consideration of cost-effectiveness under step 3 to determine *whether,* and if so in what ''amounts'' under the terms of the statute, upwind sources will significantly contribute to nonattainment or interfere with maintenance of the NAAQS. Given the complexities of evaluating ozone transport, applying the four-step interstate transport framework is a logical approach, and has been used by the EPA in numerous rulemakings, including in actions on CAA section 126(b) petitions.[80]

The EPA has repeatedly found that ozone transport problems are the result of individually small impacts from numerous sources that can have collectively large impacts on downwind ozone concentrations. Considering this ''thorny causation problem,'' *EME Homer City,* 572 U.S. at 514, the EPA must determine how to apportion responsibility for emissions reductions across many sources in many states. The EPA has considered cost within its step 3 analysis in each of its regional ozone transport rulemaking and the Supreme Court has endorsed the use of cost in this manner as an ''efficient and equitable'' solution to the problem of apportioning upwind emissions reduction responsibility. *Id.* at 519. Thus, in evaluating a CAA section 126(b) petition, it is reasonable for the EPA to similarly evaluate whether the petition has demonstrated that the sources identified can be cost-effectively controlled in determining whether the petition demonstrates that the sources are in violation of CAA section 110(a)(2)(D)(i)(I). This is particularly true for New York's petition, where the EPA is tasked with determining whether approximately 350 facilities (many of which have multiple individual emitting units[81]) in nine upwind states are operating in violation of the good neighbor provision as alleged in the petition.

[79] For example, in the CSAPR Update, the EPA noted that ozone transport occurs on a regional scale, that such transport is responsive to changes in NO_X emissions, and that NO_X emissions reductions from EGUs were effective in reducing 8-hour peak ozone concentrations during the ozone season. 81 FR 74505. Accordingly, the EPA selected a uniform control stringency to apply to states covered by the rule by identifying the emissions reduction potential from EGUs in linked upwind states available at various levels of control stringency represented by cost, assessed how these potential emissions reductions would affect each state's air quality contributions to each receptor, evaluated the total change in air quality at each receptor resulting from the emissions reductions, and evaluated whether the air quality problems at each receptor would be resolved. The EPA applied a similar approach in the CSAPR Final Rule. 76 FR 48248.

[80] *See* Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (also known as the NO_X SIP Call), 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR) Final Rule, 70 FR 25162 (May 12, 2005); CSAPR Final Rule, 76 FR 48208 (August 8, 2011); CSAPR Update for the 2008 Ozone NAAQS (CSAPR Update) Final Rule, 81 FR 74504 (October 26, 2016); Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard (the Determination Rule), Final Rule, 83 FR 65878 (December 21, 2018); Response to June 1, 2016 Clean Air Act Section 126(b) Petition from Connecticut, Final Action, 83 FR 16070 (April 13, 2018) and Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland, Final Action, 83 FR 50453 (October 5, 2018).

[81] For example, while the list of facilities in the nine named states in New York's petition includes 121 EGU facilities, the number of individual EGUs currently in operation at those 121 facilities is more than double that number.

Responsibility for Step 3 Analyses Supporting a CAA Section 126(b) Finding

As discussed earlier, the EPA interprets CAA section 126(b) as placing a burden on the petitioner to demonstrate that a finding under the provision is justified. The EPA's interpretation of the statute is reasonable given that Congress allotted the EPA only 60 days from its receipt of a CAA section 126(b) petition to hold a hearing and act on that petition. Given the short statutory deadline, it is reasonable for the EPA to conclude that Congress did not intend to require the EPA to undertake extensive fact-finding or independent analysis as part of its action on a petition and instead placed the burden upon the petitioner to provide adequate support for a requested finding under CAA section 126(b), an interpretation affirmed by the courts. *See New York* v. *EPA,* 852 F.2d 574 (D.C. Cir. 1988) (upholding the EPA's interpretation of the statutory burden in reviewing the EPA's denial of separate CAA section 126(b) petitions filed by Pennsylvania, Maine, and New York regarding air quality impacts from numerous sources located in seven midwestern states); *cf. Citizens Against Ruining the Environment* v. *EPA,* 535 F.3d 670 (7th Cir. 2008) (affirming the EPA's similar interpretation of the petitioner's burden under CAA section 505(b)(2) given the parallel 60-day deadline for the EPA to respond to a title V petition). In *New York,* the D.C. Circuit evaluated the EPA's obligation in acting on a CAA section 126(b) petition, determining that the 60-day deadline for action meant Congress did not intend for the EPA to undertake a ''litany of tasks'' in evaluating the petition and finding that denial was proper where the States failed to substantiate the claims raised in their petitions. *Id.* Accordingly, where a CAA section 126(b) petition does not contain sufficient technical information or justification to support the requested finding without the EPA undertaking an independent analysis, it is reasonable for the EPA to interpret CAA section 126(b) to support a denial of the petition.

The remedy provision under CAA section 126(c) further supports the reasonableness of the EPA's interpretation regarding the petitioner's burden. CAA section 126(c) by default requires an existing source to cease operation within 3 months if the EPA makes the requested finding under CAA section 126(b). The EPA does not believe it was the intent of Congress to require sources to shut down entirely absent a sufficient demonstration that such an extreme remedy was necessary. This concern is exacerbated by the provision of CAA section 126(b) that permits a petitioner to target ''groups of sources,'' as New York did in the petition that is subject to this action. The EPA does not believe it is reasonable to think that Congress could have envisioned that hundreds of stationary sources would be required to shut down within 3 months without petitioners providing a complete and compelling justification for such drastic consequences.[82] The potential for such an unintended consequence further supports the placement of burden on the petitioner to demonstrate in the first instance whether the identified sources emit or would emit in violation of the good neighbor provision.

The breadth of New York's petition demonstrates why the EPA's interpretation is particularly reasonable. The petition named approximately 350 facilities from several different source sectors (both EGU facilities and non-EGU facilities) in nine different upwind states and asked the EPA to evaluate and implement source-specific emissions limits for each source. While the EPA has air quality modeling information relevant to the step 1 and 2 analyses discussed earlier, this analysis was already available because the EPA completed this modeling effort for separate rulemaking actions and not solely for use in evaluating this petition. In contrast, the EPA has not already developed the type of multifactor test, collected the needed data for the relevant factors, or conducted the analysis that it would normally use in step 3 to determine whether the named group of upwind sources (or any other sources) emits or would emit in violation of the good neighbor provision. The EPA also does not currently have sufficient information available that would be necessary to independently conduct such an analysis. As noted in the Determination Rule (81 FR 65878), the EPA currently lacks the relevant data to conduct such an analysis for the multiple non-EGU source categories, including those referred to in this petition. Collecting the relevant data and conducting such an analysis independently would require the EPA to invest significant time and resources and likely to undertake such data collection efforts under a formal information collection request.[83] As discussed in more detail in this section, the 60-day deadline provided by Congress for action under CAA section 126(b) is evidence that Congress did not intend for the EPA to be required to conduct such detailed independent analyses before acting on the petitions, especially where a petition addresses a large number and variety of sources and seeks tailored unit-level remedies, as New York's petition does. While the EPA acknowledges that this task may also be resource- and time-intensive for a petitioner, the EPA nonetheless interprets the timeframe imposed on the EPA in CAA section 126(b) (along with the potentially severe consequences under CAA section 126(c) if a finding is made) as evidence that the burden is on the petitioner to demonstrate that the statutory threshold has been met.

The EPA received several comments generally conceding the petitioner bears some burden under CAA section 126(b), but asserting that nothing in CAA section 126, including the plain language of this provision, contemplates a burden on petitioner to provide information about the factors relevant to step 3 or to conduct such an analysis of the named sources, as the information regarding the sources that would be necessary for the analysis is outside of the petitioning state's control. Commenters take issue with the EPA requiring an analysis by petitioner describing the downwind air quality impacts of controlling the named sources ''relative to other sources,'' asserting that the federal government is responsible for managing the petition process in a swift manner and bears the burden for conducting intensive analyses on groups of sources presented by petitioners. Commenters also contend that by placing the burden on petitioners to provide information and analyses related to step 3, the EPA is

[82] While CAA section 126(c) provides in the alternative that the EPA may permit continued operation if it establishes emissions limitations for the sources subject to the finding within that 3-month period, this too is a detailed analytic task that requires time and resources to develop. As discussed later in this section, the EPA concedes that the Agency bears the burden of developing any emissions limitations appropriate under CAA section 126(c) once a finding under CAA section 126(b) is made, but this does not also shift the burden of justifying the finding itself onto the EPA. Rather, this further supports the EPA's conclusion that the petitioner must bear the burden of providing sufficient justification for a CAA section 126(b) finding given that the EPA may also need to develop a CAA section 126(c) remedy within the short timeframe provided for the EPA's action on a petition.

[83] An information collection request (ICR) is a set of documents that describes reporting, recordkeeping, survey, or other information collection requirements imposed on the public by a federal agency. The Paperwork Reduction Act stipulates that every federal agency must obtain approval from the Office of Management and Budget (OMB) before collecting the same or similar information from 10 or more members of the public.

inconsistently placing such burden on petitioners in comparison with its prior actions on Connecticut's, Delaware's, and Maryland's CAA section 126(b) petitions.

The EPA disagrees with these comments. As an initial matter, the plain language of CAA section 126 does not speak to whether the burden is on petitioner or the EPA to substantiate the requested finding. By contrast, other CAA statutory provisions that provide for a petition process clearly speak to the placement of burden for making the requisite demonstration for a successful petition. *See e.g.,* CAA sections 111(g), 505(b)(2). Accordingly, in the absence of such plain language, CAA section 126 is ambiguous as to this issue and the EPA may reasonably interpret CAA section 126 in determining the placement of burden in the context of acting on a state's petition. As described at proposal and consistent with the EPA's historical approach to evaluating CAA section 126 petitions, the EPA reasonably interprets the statute to place the burden on petitioner to establish a technical basis for the specific finding requested given the short statutory deadline for acting on CAA section 126 petitions. 84 FR 22797. As the commenter acknowledges, the D.C. Circuit determined in reviewing a prior EPA action on a CAA section 126(b) petition that, based on the 60-deadline for action on such a petition, it is reasonable to conclude that petitioners bear the burden to make any necessary technical demonstration to support a finding. *New York,* 852 F.2d at 578. What commenters do not acknowledge is that the court in that case further concluded that Congress did not intend the EPA to be required to perform a litany of tasks ''in such a short period of time in the absence of the clearest expression.'' *Id.* at 578.[84] For these reasons, the EPA believes not only that such a ''clearest expression'' is absent from CAA section 126(b) but also that in such absence, it is at least reasonable to interpret Congressional intent as being to the contrary.

Further by way of analogy, CAA section 505(b)(2) gives the EPA 60 days to act on a petition requesting the Agency to make an objection to a title V permit. While CAA section 505(b)(2) contains an explicit demonstration burden on the petitioner, the EPA has interpreted the demonstration burden as crucial in part based on the limited nature of the 60-day deadline. The EPA has previously described that it relies on the petitioner's demonstration in determining whether to make the petitioner's requested objection because the 60-day window is reasonably read as not requiring the Agency to engage in extensive fact-finding or investigation. *See* In the Matter of Consolidated Environmental Management, Inc.—Nucor Steel Louisiana, Partial Order Responding to Petitioners' May 3, 2011 & October 3, 2012 Requests that the Administrator Object to the Issuance of Title V Operating Permits, 4–6 (June 19, 2013), *available at https://www.epa.gov/sites/production/files/2015-08/documents/nucor_steel_partialresponse2011.pdf.* In *Citizens Against Ruining the Environment* v. *EPA,* the Seventh Circuit substantiated this interpretation by noting that, because of the limited timeframe Congress gave the EPA to decide whether to object to a permit, ''it is reasonable in this context for the EPA to refrain from extensive fact-finding.'' *Citizens Against Ruining the Environment,* 535 F.3d at 678. Given the parallel 60-day deadline under CAA section 126(b), the EPA believes it equally reasonable to construe that under CAA section 126(b), in the absence of a petition containing adequate technical information or justification necessary for the EPA to determine whether the requested finding is warranted, the EPA is not required to undertake its own extensive fact-finding or investigation and may deny the petition.[85]

The EPA also disagrees with commenters who suggest that, while New York as the petitioning state has the burden to demonstrate the named sources are located in upwind states that are linked to downwind impacts on New York under steps 1 and 2, petitioning states do not have the burden to provide a step 3 analysis, but rather, that it is the EPA's burden.

These comments are based on a fundamental misunderstanding of the purpose of steps 2 and 3 of the four-step interstate transport framework. Identification of a linkage between an upwind state and a downwind receptor at step 2 of the inquiry does not conclude the determination regarding whether sources in the upwind state will significantly contribute to nonattainment or interfere with maintenance of the NAAQS. Rather, the conclusion that a state's emissions met or exceeded the threshold only indicated that further analysis, conducted in step 3, is appropriate to determine *whether* any of the upwind state's emissions met the statutory criteria under the good neighbor provision and if so, in what amounts. The EPA does not draw any conclusions regarding whether sources in upwind states are emitting in violation of the prohibition of the good neighbor provision until the step 3 analysis is concluded. *See EME Homer City,* 572 U.S. at 501–03 (noting upwind states are only obliged to eliminate emissions meeting both the step 2 and 3 inquiries). Thus, as the EPA has interpreted CAA section 126(b) as imposing on the petitioner the burden to demonstrate that a finding is warranted, the petitioner only fulfills that burden if both a step 2 and step 3 analysis are provided with the petition.

An interpretation of CAA section 126(b) placing any burden regarding a step 3 cost-effectiveness analysis on the EPA, particularly for a petition that names approximately 350 facilities with an even larger number of individual emitting units, is unreasonable in light of the statutory 60-day deadline and contravenes the D.C. Circuit's conclusion in *New York* that Congress did not intend such a task to fall on the EPA. Such a task is infeasible within the statutory deadline, and thus the EPA believes a much more reasonable interpretation of CAA section 126(b) is to place the demonstration burden on the petitioner. Contrary to commenter's assertion, the placement of burden to perform a step 3 analysis is consistent with the EPA's historical practice in reviewing CAA section 126(b) petitions.[86] While the EPA has, at times,

[84] In determining that the 60-day deadline under CAA section 126(b) is reasonably read to not require the EPA to undertake certain tasks, the court acknowledged the 6-month extension available under CAA section 307(d)(10) as part of its analysis. *New York,* 852 F.2d at 578 n.2. While the statute separately permits the EPA up to 6 additional months to complete the rulemaking processes required by CAA section 307(d) when acting on a CAA section 126(b) petition, this provision applies to any statutory deadline which requires promulgation of an action less than 6 months after a proposal is issued. Thus, it cannot be read to independently create an obligation for the EPA to conduct detailed technical analyses.

[85] The EPA notes while there is a parallel 60-day deadline under both petition provisions, there is no analogous mechanism for the EPA to grant itself an extension for acting on a petition submitted under CAA section 505(b)(2) as there is under CAA 307(d)(10) for CAA section 126(b) petitions. However, unlike CAA section 505(b)(2), the Act places additional requirements on the EPA to hold a public hearing, pursuant to CAA section 126(b), and to engage in a formal rulemaking process under CAA section 307(d), including issuance of a proposed action, provision of a public comment period and the obligation to formally respond to significant adverse comments. Therefore, while an extension is available to the EPA for acting on a CAA section 126(b) petition, there are additional procedural requirements that the EPA must satisfy during this time period that petitions submitted under CAA section 505(b)(2) do not need to address.

[86] Response to June 1, 2016 Clean Air Act Section 126(b) Petition from Connecticut, Final Action, 83 FR 16070 (April 13, 2018) and Response to Clean

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performed an independent step 3 analysis in evaluating a CAA section 126(b) petition, it has chosen to do so where it has had existing information and analyses available or where the petition identified a single source that would require less time to evaluate.[87] The EPA's consideration of existing information and analyses in such circumstances does not, however, shift the burden to the EPA to engage in fresh fact-finding or analyses in all future petitions.

The interpretation that the petitioner bears the burden under CAA section 126(b) to conduct the step 3 analysis is especially reasonable when considering what would otherwise occur if CAA section 126(b) were understood to require the EPA to undertake the required technical analysis for determining whether a petition's requested finding should be made. Notably, New York's petition names numerous sources, including more than 220 non-EGU facilities, for which the EPA does not have all of the information necessary to conduct a full step 3 analysis (*e.g.,* the current operating status of each named facility, the magnitude of emissions from each emitting unit within each named facility, the existing controls on each of these emissions units, additional control options on each emissions unit, the cost of each potential control option, the emissions reductions potential resulting from the installation of controls, and potential air quality impacts of emissions reductions).

Because the EPA does not independently have sufficient information about these sources to perform an analysis under the four-step interstate transport framework that it can use to supplement or stand in for New York's analysis, the EPA has not done so here. For a petition that names numerous sources, as New York's petition does, an alternative interpretation of burden under CAA section 126(b) would require the EPA to conduct a time- and resource-intensive analysis of whether all of this multitude of sources have cost-effective emissions reductions available under step 3, in addition to the mandatory notice-and-comment process, all within 60 days (or up to an additional 6 months, invoking the extension provision in CAA section 307(d)(10)) to meet its statutory deadline to take action on the petition.[88] If the EPA had insufficient time to conduct such an independent analysis, the commenters contention would have severe consequences. Essentially, the commenters suggest that the EPA is, in the absence of its own step 3 analysis, nonetheless required to make the requested finding simply because the States in which the named sources are located are linked to a downwind air quality problem at step 2. This would further mean that all of the named sources would be required to shut down within 3 months of the finding—a result the petitioner has not requested. Moreover, this means that a CAA section 126(b) petitioner could choose to target any source in any linked upwind state—regardless of its particular size, source characteristics, or downwind impacts—and demand that the EPA require the source to shut down simply because it is located in the linked state. As discussed in in this section, such results could not have been intended by Congress in promulgating the petition process in CAA section 126.

The burden on New York to perform a step 3 analysis may appear to be high in this case, but CAA section 126 does not place any deadline on petitioners for submitting such a petition and thus provides time for petitioners to perform such an analysis, contrary to the deadline placed on the EPA in acting on it. Moreover, the apparent weight of the burden in this case is the natural result of the petitioner's decision to name approximately 350 facilities (each, potentially with multiple emissions units) from 9 states, which essentially amounts to seeking a regional action.

Certain commenters further suggest that their approach, which would require the EPA to bear the burden for conducting extensive analyses on groups of sources presented by petitioners, is supported by legislative history cited by the Third Circuit in its *GenOn* decision, wherein the court noted that the federal government is the entity that ''can and must provide the technical information and enforcement assistance that States and localities need.'' 722 F.3d at 523 (quoting S.Rep. No. 95–127, at 10 (1977), reprinted in 3 1977 Legislative History of the Clean Air Act Amendments of 1977, at 1450)). The EPA disagrees with commenters' characterization of both this legislative history and the court's opinion in *GenOn.* The legislative history quoted is part of a section titled ''General Statement'' providing an overview of initiatives and issues informing the Senate Committee's report on the 1977 Clean Air Act Amendments as a whole and is not specific to CAA section 126. Though the EPA agrees it has a fundamental and important role in providing technical information and enforcement assistance as part of implementing the Act, the legislative history does not speak to this role specifically in the context of CAA section 126.

Additionally, to the extent the commenter is suggesting that the Third Circuit in *GenOn* cited to this legislative history to support the interpretation that an investigative burden lies with the EPA in acting on a CAA section 126(b) petition, the EPA disagrees. The court in that case addressed the question of whether the EPA could act on a CAA section 126(b) petition in instances where the Agency had not yet acted on a CAA section 110 SIP addressing interstate transport for the same NAAQS. In this context of determining the appropriate timing of acting on a CAA section 126(b) petition, the court cited this legislative history in pointing out that the EPA, as the federal regulator, was intended to intervene when states failed to adhere to the air pollution control process, and thus the EPA is not obligated to wait for the states to address and resolve interstate transport of pollution through the SIP process before acting on a CAA section 126(b) petition. The court did not speak to who has the *burden* of substantiating a requested finding, particularly when the EPA does not have sufficient information regarding sources named in the petition. Notably, as the Third Circuit discussed, the obligation to act quickly under CAA section 126(b) ''petition process is intended to expedite, not delay, resolution of interstate pollution conflicts.'' *GenOn,* 722 F.3d at 523 (quoting H.R.Rep. No. 95–294, at 331 (1977), reprinted in 4 1977 Legislative History of the Clean Air Act Amendments of 1977, at 2797). The swiftness Congress intended in acting on a CAA section 126(b) petition conflicts with requiring the EPA to acquire and develop new information as part of taking such swift action. Therefore, the legislative history supports the EPA's reasonable

Air Act Section 126(b) Petitions from Delaware and Maryland, Final Action, 83 FR 50453 (October 5, 2018).

[87] Response to June 1, 2016 Clean Air Act Section 126(b) Petition from Connecticut, Final Action, 83 FR 16070 (April 13, 2018) and Response to Clean Air Act Section 126(b) Petitions from Delaware and Maryland, Final Action, 83 FR 50453 (October 5, 2018) and Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (November 7, 2011).

[88] The EPA also notes that as a matter of administrative law in the context of when an agency declines to undertake rulemaking, the Supreme Court has found that ''an agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities.'' *Massachusetts* v. *EPA,* 549 U.S. 497, 527 (2007). This principle is especially salient when an agency has limited time statutorily for determining whether rulemaking is necessary.

interpretation of CAA section 126(b) as placing the burden for substantiating the requested finding on petitioner.

Several commenters also assert that New York met its burden under CAA section 126(b) and that considerations regarding the cost-effectiveness of controls at step 3 are only appropriate under CAA section 126(c), under which the EPA bears the burden to develop a remedy for a finding made under CAA section 126(b). Commenters characterize the EPA's reliance on the D.C. Circuit's decision *New York* as placing the burden on petitioning states to support both findings under CAA section 126(b) and the remedy under CAA section 126(c). According to commenters, the court did not hold that the EPA had no burden to undertake any tasks or analysis within the limited timeframe for action on a CAA section 126(b) petition. Rather, according to commenter, the court only found that the EPA had no affirmative duty to review all existing state implementation plans for a relevant NAAQS and determine if they contained adequate provisions for compliance with each upwind state's good neighbor provision obligations. Commenters additionally state the EPA's prior action on New Jersey's CAA section 126 petition to control emissions from the Portland Generating Station contradicts the EPA's position that it is New York's responsibility as petitioner to analyze and define the remedy.

The EPA disagrees that, by requiring the petitioner under CAA section 126(b) to provide an analysis of step 3 under CAA section 126(b), it is shifting the burden to petitioners to develop the remedy under CAA section 126(c). As described in Section II.C.1, in examining petitions filed under CAA section 126(b), the EPA has reasonably applied the four-step interstate transport framework used for analyzing whether there is significant contribution to nonattainment, or interference of maintenance of the ozone NAAQS under CAA section 110(a)(2)(D)(i) because those same terms are incorporated into CAA section 126(b). The four-step interstate transport framework includes a multi-factor analysis of the availability of cost-effective controls under step 3. As discussed earlier, this step 3 analysis is an essential part of making the determination of *whether* sources significantly contribute to nonattainment or interfere with maintenance under the good neighbor provision, and thus whether a finding is justified under CAA section 126(b). While the result of a step 3 analysis can be a quantification of the amount of emissions that constitute the state's significant contribution (or interference with maintenance) under the good neighbor provision, the imposition of a federally enforceable emissions limitation to reduce that amount of emissions does not occur at step 3, but rather occurs under step 4. Thus, the analysis of cost-effective emissions reductions at step 3 is an essential part of making the significant contribution or interference of maintenance finding required under CAA section 126(b).

Accordingly, the EPA treats the conclusions drawn at step 3 as distinct from the remedy imposed at step 4 under CAA section 110(a)(2)(D)(i)(I), and similarly acknowledges and treats CAA section 126(b) and 126(c) as separate provisions, contrary to commenters suggesting otherwise. In the EPA's regional rulemakings for ozone transport pursuant to CAA section 110, if through the first three steps under the four-step interstate transport framework the EPA has determined there are cost-effective controls available at sources located in upwind states impacting downwind states above a certain threshold, then the EPA has determined that there is significant contribution to nonattainment or interference with maintenance, at which point the Agency imposed federally enforceable emissions limitations on those sources under step 4. For example, at step 3 in the CSAPR Update, the EPA evaluated available NO_X emissions reductions by applying uniform levels of control stringency, represented by cost, in order to quantify the amount of emissions that constituted each upwind state's significant contribution to nonattainment or interference with maintenance and then established NO_X emissions budgets necessary to prohibit that level of emissions. At step 4 in the CSAPR Update, the EPA promulgated federally enforceable allowance trading programs to implement the NO_X emissions budgets calculated under step 3. 81 FR 74504, 74519–21. Notably in the CSAPR Update, by contrast, where the EPA has found a state has no cost-effective controls at step 3, even if the state is linked to downwind impacts under steps 1 and 2, the EPA has not imposed emissions limits at step 4. *Id.* at 74553.[89] Therefore, to the extent a CAA section 126(b) petition (and the EPA's independent analysis to the extent there is such analysis) applies steps 1, 2, and 3 of the four-step interstate transport framework to successfully show an upwind source, or group of sources, is having downwind impacts in violation of the good neighbor provision, then the EPA would make such a finding under CAA section 126(b) and fulfill its duty under CAA section 126(c) either by imposing the prescribed remedy under subsection (c)(1) (*e.g.,* an existing source must cease operation within 3 months) or by promulgating federally enforceable emissions limitations under subsection (c)(2) to bring the upwind source(s) into compliance with the good neighbor provision. The fulfillment of this obligation by the EPA under CAA section 126(c) is consistent with step 4 of the four-step interstate transport framework, and therefore the EPA is not improperly shifting its burden of developing a remedy to the petitioner under CAA section 126(b). Rather, because the EPA finds that New York as petitioner did not meet its burden under CAA section 126(b) of showing significant contribution to nonattainment or interference with maintenance through application of steps 1 through 3, the EPA did not make the requested finding and, consequently, did not trigger its obligation to impose emissions limitations under CAA section 126(c).

Furthermore, contrary to commenters' assertions, the EPA has not interpreted the D.C. Circuit's holding in *New York* as placing the burden on petitioning states to fully develop the remedy under CAA section 126(c). The EPA acknowledges that the imposition of federally enforceable emissions limitations (analogous to step 4 of the four-step interstate transport framework) is its own obligation under CAA section 126(c). Therefore, the EPA is not relying on the *New York* decision to support a proposition it does not hold. However, the EPA further disagrees with commenter's narrow reading of *New York* as simply finding that the EPA had no affirmative duty to review all existing state implementation plans for a relevant NAAQS and determine if they contained adequate provisions for compliance with each upwind state's obligations under the good neighbor provision. While the specific argument the petitioners in *New York* advanced was that a CAA section 126(b) petition triggered an obligation for the EPA to investigate whether the good neighbor SIPs for all of the States named in the petition are in compliance with CAA section 110(a)(2)(D)(i)(I), the court's logic in addressing this argument applies to the broader question of the EPA's obligation in reviewing a CAA

[89] *See* also 76 FR 48262 (finding no limits necessary in the District of Columbia to satisfy good neighbor requirements for the 1997 ozone, 1997 $PM_{2.5}$, or 2006 $PM_{2.5}$ NAAQS because the EPA identified no available cost-effective emissions reductions).

section 126(b) petition. Specifically, the court in *New York* held that it is reasonable to conclude Congress did not intend for the EPA to undertake a series of procedural and substantive actions to evaluate CAA section 110 SIPs in order to act on a CAA section 126(b) petition, premised on the short 60 day-deadline. 852 F.2d at 578 (holding Congress did not intend for the EPA to be required to perform ''an entire array of investigative duties'' in reviewing a CAA section 126(b) petition). Gathering source-specific information about approximately 350 sources and then conducting a regional cost-effectiveness analysis of them is likely *more* (or at least *as*) burdensome than the review of existing SIPs that the *New York* court said the EPA does not have to do in reviewing a CAA section 126(b) petition. Therefore, the EPA's interpretation of the burden in CAA section 126(b) in this case, as it applies to the time and resources required to conduct a step 3 analysis, is consistent with the interpretation endorsed by the *New York* court.

The EPA also disagrees with commenters' contention that its prior action on a CAA section 126(b) petition from New Jersey regarding SO_2 emissions from the Portland Generating Station in Pennsylvania contradicts the EPA's position in the present action that the burden lies with petitioner to analyze step 3. Rather, as the EPA clearly stated in its proposed response to New Jersey's petition, the EPA first looks to see if the petition identifies or contains a sufficient basis to make the requested finding. The EPA went on to state that, nonetheless, it may decide to conduct independent technical analyses when such analyses are helpful in evaluating the basis for a potential CAA section 126(b) finding or developing a remedy if a finding is made. The EPA invoked this discretion to perform an independent analysis in acting on New Jersey's petition. However, the invocation of such discretion in acting on New Jersey's petition does not contradict the EPA's position that the burden is on the petitioner to provide an analysis under step 3. The EPA concluded in the New Jersey action, as it does again here, that the discretionary independent analysis is not compelled by statute. 76 FR 19662, 19666 (April 7, 2011).

Additionally, the EPA disagrees with commenters' assertions that the EPA's past action on New Jersey's CAA section 126(b) petition shows it is now incorrectly conflating CAA section 110(a)(2)(D)(i) with CAA section 126. In analyzing New Jersey's CAA section 126(b) petition and the technical analysis the State submitted in support of the requested finding, the EPA in fact imported similar factors as those outlined in the four-step interstate transport framework used under CAA section 110 to evaluate the petition's analysis contending the identified source was emitting in violation of the good neighbor provision. Furthermore, in acting on New Jersey's petition, the EPA treated step 3 as distinct from step 4. Similar to step 1, the EPA first concluded that based on the petition's technical analysis, the petitioning downwind state had an air quality problem for the 2010 SO_2 NAAQS. Similar to step 2, the Agency determined that, based on the petition's analysis, emissions from the named source in the upwind state alone were sufficient not just to contribute to, but to *cause* a violation of the NAAQS in the petitioning state. As such, the EPA's analysis of the petition's technical showing functionally comprised a step 3 analysis by determining under CAA section 126(b) that the facility should be regulated because of the magnitude of its contribution and the relative lack of other contributing sources. Because the EPA determined that the petition made demonstrations equivalent to steps 1 through 3 and established that the named source was emitting in violation of the good neighbor provision, the EPA essentially reached step 4 by imposing federally enforceable source-specific rate limits pursuant to CAA section 126(c) to eliminate the source's significant contribution. *See* Final Response to Petition From New Jersey Regarding SO_2 Emissions from the Portland Generating Station, 76 FR 69052 (November 7, 2011).

Information and Analyses Considered Within Step 3

As the EPA interprets the substantive standard under CAA section 126(b) consistent with its interpretation of the good neighbor provision in CAA section 110(a)(2)(D)(i), it is reasonable for the EPA to consider the same type of factors whether evaluating ozone transport in the context of a good neighbor SIP under CAA section 110 or a section 126(b) petition. Thus, based on the EPA's interpretation of CAA section 126(b) as placing the burden on petitioner, the EPA reviewed New York's petition to determine whether it has provided sufficient information to support a determination based on some type of analysis of cost and air quality factors, either the same as or similar to, those that the EPA evaluated in past rulemakings addressing regional ozone transport under the good neighbor provision. The EPA notes that it considered these factors in the NO_X SIP Call, CAIR, CSAPR, and the CSAPR Update, so it was clear that the EPA considers such an analysis to be necessary to determine, under CAA section 126(b), whether upwind sources will significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in New York. For example, in the CSAPR update, the EPA implemented emissions reductions found to be cost-effective at EGUs (including within the upwind states identified in New York's petition) by the 2017 ozone season, but it did not evaluate potential control strategies available on a longer implementation timeframe or at non-EGUs. 81 FR 74521–22. The EPA has not conducted a regional step 3 analysis for any sources with respect to the 2015 ozone NAAQS, but nonetheless believes consideration of the same type of cost and air quality factors could be reasonable for evaluating upwind state obligations under the good neighbor provision for that standard.

The EPA's review of the petition indicates that New York has not sufficiently developed or evaluated the cost and air quality factors that the EPA has generally relied on in step 3; has not described and conducted any sort of multifactor analysis to determine whether cost-effective controls are available at the named sources considering these factors; and has not provided any alternative analysis that would support a conclusion at step 3 that the named sources will significantly contribute to nonattainment or interfere with maintenance of the NAAQS. The petition, therefore, has not adequately supported its conclusion that the sources named in its petition will significantly contribute to nonattainment or interfere with maintenance of either the 2008 or the 2015 ozone NAAQS. The petition simply applies a uniform approach beginning with a review of the entire anthropogenic emissions inventory and then identifying facilities that appear to have larger emissions than other facilities (at least 400 tons of NO_X per year) without supporting why the named facilities either can or should make certain reductions. As the EPA indicated in the proposal, the petition could have included one or more of the following potential analyses to evaluate, compare and identify ''significant'' emissions from of the named sources, consistent with the EPA's past practice in evaluating regional ozone transport: (i) Verifying that the named sources whose emissions are those from the

most recent emissions inventory continue to emit NO_X at the same rate or continue to operate; (ii) describing or quantifying potentially available emissions reductions from the named sources (*i.e.,* the control technologies/techniques and the costs of those control technologies/techniques); (iii) describing the downwind air quality impacts of controlling the named sources relative to other sources; or (iv) providing information on the relative cost of the available emissions reductions and whether they are less expensive than other reductions from other sources. In the absence of this or any such similar analyses, the petition has not demonstrated, based on information available at this time, that the sources named in the petition should be required to make further emissions reductions under the good neighbor provision.

The petition also has not demonstrated how to weigh these relevant cost and air quality factors to determine an appropriate level of control for the named sources. Instead, the petition simply asserts that upwind sources should be subject to a comparable level of control as sources in downwind states, *i.e.,* the $5,000/ton level of control sources in New York are subjected to for purposes of RACT. While information regarding costs of controls in the downwind area may be useful when evaluating upwind emissions reduction potential, such information is not determinative of the appropriate level of upwind control. As the EPA explained at proposal, nothing in the text of the good neighbor provision indicates that upwind states are required to implement RACT, which is a requirement that applies to most areas designated nonattainment, *see* CAA section 172(c)(1) (nonattainment areas generally), 182(b)(2) (ozone nonattainment areas classified as Moderate), nor does the provision require uniformity of control strategies imposed in both upwind and downwind states. Rather, the good neighbor provision indicates that states are required to prohibit those emissions which ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the NAAQS in a downwind state, terms that the Supreme Court has found to be ambiguous. *See EME Homer City,* 572 U.S. at 489.[90] The EPA has always considered cost under the good neighbor provision as part of a multifactor analysis based on the facts and circumstances of the air quality problem at the time of each evaluation, but the EPA has never set upwind control obligations based solely on the level of controls imposed for purposes of RACT in downwind nonattainment areas, as the petition suggests the EPA do here. The EPA believes that such a multifactor analysis that considers relevant cost and air quality factors is important for any evaluation of a CAA section 126(b) petition regarding interstate transport of ozone (a regional pollutant with contribution from a variety of sources), as the EPA reviews whether the particular sources identified in the petition should be controlled considering the costs and collective impact of emissions on air quality in the area, including emissions from other anthropogenic sources. The petition fails to conduct any comparable analysis. Review of the named sources in New York's petition may provide a starting point for such an analysis but does not complete the analysis or even provide the type of data that would be necessary for the EPA to conduct such an analysis to determine whether the named sources emit or would emit in violation of the good neighbor provision.

The petition also suggests that upwind sources should be subject to a comparable level of control as sources in downwind states, in part, because it asserts that, while the CSAPR program provides the legal and technical basis for states to eliminate their significant contributions to excessive ozone pollution, the EPA has failed to implement a full, federal-level remedy to completely address the issue of transported ozone, instead issuing EGU NO_X ozone season emissions budgets as a partial remedy for interstate transport for the 2008 ozone NAAQS. The petition asserts that, according to the analyses in the CSAPR Update, after application of the rule's NO_X budgets, the EPA's modeling still projected multiple remaining nonattainment and maintenance receptors in the NYMA, including monitoring sites in Fairfield and New Haven Counties in the Connecticut portion of the area, which would continue to project nonattainment in 2017.

While the EPA acknowledged in the CSAPR Update that the FIPs may only be a partial remedy for interstate transport for the 2008 ozone NAAQS, the EPA subsequently promulgated the Determination Rule, in which the EPA concluded that the existing CSAPR Update fully addresses the interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS for certain states, including eight of the States named in New York's petition (Illinois, Indiana, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia), because the downwind air quality problems projected in 2017 would be resolved in 2023. 83 FR 65878 (December 21, 2018). The EPA also approved a SIP from Kentucky which similarly determined that the CSAPR Update FIP would fully satisfy the State's good neighbor obligation with respect to the 2008 ozone NAAQS (83 FR 33730). Thus, the EPA has now determined through this set of actions that the emissions reductions required under the CSAPR Update fully address the good neighbor requirements with respect to the 2008 ozone NAAQS for all the States named in the petition. For the reasons explained in this section, the petition has failed to demonstrate that it is necessary to implement additional, source-specific, unit-level emissions limits at any of the sources named in the petition to ensure reductions are being achieved under the CSAPR Update.

Several commenters contend that it is unreasonable to have expected New York to address many of the step 3 considerations that the EPA outlined in the proposal. One commenter claims that the EPA's position that New York's petition needed to provide analyses describing the downwind air quality impacts of controlling the named sources ''relative to other sources'' is an unreasonable requirement for a CAA section 126(b) petition. The commenter asserts that the need for a comparative demonstration is particularly unreasonable here because the petition already encompasses all large upwind stationary sources collectively linked to New York's downwind nonattainment and/or maintenance problems. The commenter further states that New York has no ability to obtain more specific cost figures for the sources named in the petition. The commenter asserts that the EPA either has such information or can obtain it when developing the remedy under CAA section 126(c).

Another commenter states that the EPA undertook comprehensive EGU and non-EGU control analyses in 2016 as part of its CSAPR Update efforts, which resulted in two detailed TSDs that considered availability of controls, associated costs, and installation times. The EPA further noted in the non-EGU TSD that ''the EPA continues to assess the role of NO_X emissions from non-

[90] *EME Homer City* also held that the EPA is precluded from requiring more emissions reductions than necessary to address downwind nonattainment and maintenance issues. 572 U.S. at 521–22. The petition also fails to demonstrate that the imposition of RACT-level controls on all named upwind sources will not result in the type of over-control forbidden by the Supreme Court under the good neighbor provision.

EGU sources to downwind nonattainment problems.'' The commenter asserts that given its authority to gather data, its existing research on both EGU and non-EGU NO_X control technologies, and the 8 months afforded it by the CAA to act on a petition, the EPA has had adequate time to conduct the analysis and define emissions limits for petitioned units that would effectuate the remedy requested by the petition.

The EPA disagrees with the commenters' assertions. As discussed in Section II.C of this notification, the EPA has repeatedly found that ozone transport problems are the result of individually small impacts from numerous sources in upwind states that can have collectively large impacts on downwind ozone concentrations. Apportioning responsibility for emissions reductions across many sources in many states is a key outcome of applying the four-step interstate transport framework, which, considering various cost and air quality factors under step 3, identifies a rational basis for determining that emissions reductions should be required under the good neighbor provision from certain sources rather than others. This source comparison necessarily involves identifying the current operating status of each named facility, the magnitude of emissions from each emitting unit within each named facility, the existing controls on each of these emissions units, additional control options on each emissions unit, the cost of each potential control option, the emissions reductions potential resulting from the installation of controls, and potential air quality impacts of emissions reductions. Without this information, the EPA cannot determine whether the sources named in the New York petition have available or cost-effective emissions reductions either as compared to one another or as compared to other, unnamed sources in the same upwind states or in other states. Moreover, the EPA cannot determine whether it would be appropriate to regulate any of the hundreds of sources named in New York's petition without such information.

While the EPA initiated analyses of emissions reduction potential available at EGUs and non-EGUs conducted in support of the CSAPR Update, the analyses were limited in scope, as described in Section II.C. Since finalizing that rule, the EPA has not gathered significant additional information or completed additional analyses regarding the availability of additional controls beyond that which is included in the EGU and non-EGU TSDs identified by the commenter because the EPA has not needed this information to support any current EPA-initiated federal ozone rulemakings. The EPA maintains that the petitioner bears the burden of establishing a technical basis for the specific finding requested and has not done so here.

On the contrary, commenters supporting the petition had the opportunity to, but did not, provide such analyses during the public comment period on the proposed action. Rather, multiple different commenters supporting denial of the petition provided corrections or supplemental information indicating that the operational status and/or emissions information provided in the New York petition were incorrect, further suggesting that granting the petition as to certain units would be unjustified on the facts before the Agency. Generally, commenters opposing the denial did not provide information regarding the installation or cost of controls or the potential emissions reductions available. In the absence of such analyses and information, the petition has not demonstrated, based on information available at this time, that the sources named in the petition should be required to make further emissions reductions pursuant to CAA section 126(b). The existence of two EPA technical support documents on controls for EGUs and non-EGUs mentioned by commenters does not contradict this conclusion.

Several commenters contend that the petition adequately met the step 3 requirements because New York demonstrated that there are available, cost-effective emissions reductions from the named upwind sources. Commenters assert that New York has done so by showing that certain named upwind sources that have average emissions rates over 0.15 lb/mmBtu, the emissions rate that is consistent with New York's RACT requirement, and that setting an enforceable NO_X emissions limit equivalent to New York's NO_X RACT requirements at a cost of $5,000/ton of NO_X reduced could be met in many cases by operating existing controls. Commenters further assert that the EPA has failed to explain why it would not be cost effective to implement NO_X controls at the group of sources identified in the petition. Commenters point to the legislative history of CAA section 126(b) as demonstrating an important part of the impetus to add CAA section 126(b) was to help equalize control costs between upwind and downwind states,[91] and state that New York is only seeking to require upwind sources to comply with requirements it already imposes on its own in-state sources.

The EPA disagrees that the petition's proposal that New York's RACT standard be applied to the identified sources provides enough information for the EPA to conclude, at step 3, that each of the sources will significantly contribute to nonattainment or interfere with maintenance in the NYMA. While New York proposes a uniform level of cost and control (at $5,000/ton and 0.15 lb/mmBtu), neither New York nor the commenters provide an explanation for why that is an appropriate level of control to use to define significant contribution under the good neighbor provision and CAA section 126(b). As discussed earlier, the fact that the sources have a collective impact over an air quality threshold at step 2 does not address whether the sources have cost-effective emissions reductions at step 3.

For example, the petition provides no information demonstrating that the 0.15 lb/mmBtu rate is achievable at all sources, whether at $5,000 or at other costs. While the commenter suggests that *some* sources might meet that limit through operation of existing controls, neither the commenter nor the petition demonstrates that all of the approximately 350 sources could meet that proposed rate at the proposed $5,000/ton threshold. Thus, the EPA cannot conclude that the proposed rate is cost-effective for the suite of sources. Moreover, the petition does not identify *which* sources have existing controls that can be operated to meet that rate, meaning the EPA could not even grant the petition as to certain sources without identifying or generating additional information. Furthermore, commenters assert that some of the sources are already meeting the rate, suggesting that even under the petition's own approach that these sources are not significantly contributing to any air quality problems in New York. It is therefore left to the EPA to determine not only which sources have the emissions that constitute the alleged significant contribution, but also which

[91] Specifically, commenters quote the following, ''In the absence of interstate abatement procedures, those plants in States with more stringent control requirements are at a distinct economic and competitive disadvantage. [CAA section 126(b)] is intended to equalize the positions of the States with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own State.'' S.Rep. No. 95–127, at 42 (1977), reprinted in 3 1977 Legislative History of the Clean Air Act Amendments of 1977, at 42).

sources the petition even correctly names.

Moreover, a conclusion that the emissions rate proposed by New York is cost-effective at $5,000 per ton of NO_X removed ignores the critical question of what relevant ozone improvements would be achieved at the downwind area at that cost threshold or considering any other potential control strategies. Determinations about what constitutes reasonably available control technology ''evaluat[e] whether implementation of certain controls within a nonattainment area will be effective at addressing a local air quality problem relative to the cost of such controls.'' 83 FR at 50470. What controls are required *locally* in nonattainment areas is a different question from whether emissions from upwind states, which travel longer distances and have different downwind impacts, ''significantly contribute'' to downwind nonattainment under the good neighbor provision. As the D.C. Circuit held in *North Carolina,* the good neighbor provision does not permit the EPA to simply ''pick a cost for a region and deem 'significant' any emissions that sources can eliminate more cheaply.'' 531 F.3d at 918. Rather, the EPA must ''achieve something measurable toward the goal of prohibiting sources 'within the State' from contributing significantly to downwind nonattainment'' and ''explain how the objectives in section 110(a)(2)(D)(i)(I) relate to its choice of . . . emissions caps.'' In the context of a section 126(b) petition, this is the petitioner's burden in the first instance.

The EPA further disagrees that the cited legislative history supports the petition's and commenters' conclusion that the upwind states should impose controls commensurate with New York's RACT. Although indicating that CAA section 126 was intended to increase the equity between the States with respect to taking responsibility for impacts on air quality problems, nowhere did Congress indicate that upwind states were required to impose the same level of control as downwind states in all cases. If Congress had intended this result, the statute could have been written in this manner. Instead, Congress referenced CAA section 110(a)(2)(D)(i), which also fails to include a specific control level and instead uses the ambiguous terms ''significant contribution'' and ''interference with maintenance'' to describe the amount of emissions upwind states are required to control, and CAA section 126(b) simply incorporated that standard.

Moreover, the concept of ''equity'' is particularly difficult to define in the context of ozone transport, given that downwind ozone concentrations are affected by individually small impacts from emissions of hundreds and thousands of sources. First, as to the number of sources potentially impacted, states with nonattainment areas are generally required to implement RACT at major sources located only within the boundaries of the nonattainment area or within the Ozone Transport Region (OTR). However, the petition's and commenters' argument suggests that the same controls should be imposed on *all* major sources throughout upwind states so long as the state has a linkage at or above the step 2 threshold [92]—a much higher burden than the statute imposes on local emissions within the home state of a nonattainment area.[93] Second, there is no uniform threshold for determining what rate and cost represent RACT. The process for identifying RACT considers a variety of factors and can vary from nonattainment area to nonattainment area, from state to state, and indeed from source to source. Thus, it is not necessarily ''equitable'' to rely on a single state's conclusion as to what constitutes RACT for its mix of sources in order to define ''significant contribution'' for a suite of different sources in numerous distant upwind states. Rather, as the Supreme Court concluded, the EPA's use of cost to evaluate different types of control strategies and select a level of control for a region is itself ''equitable,'' and achieves the intention reflected in the legislative history, because it ''subjects to stricter regulation those States that have done relatively less in the past to control their pollution.'' *EME Homer City,* 572 U.S. at 519.

One commenter asserts that data indicate that certain facilities named in New York's CAA section 126(b) petition could be controlled. Specifically, the commenter notes that the Brunner Island Power Plant completed installation of a natural gas line in 2017, but that 2018 emissions data reveal the facility fired coal on approximately 32 days in the ozone season, of which nine were days when the ozone standard was exceeded in New York State. The commenter further notes that the EPA found in denying Maryland and Delaware's CAA section 126(b) petitions that the CSAPR Update was controlling emissions from the EGUs named in the petition and from EGUs collectively in the named upwind states that impact ozone concentrations in Maryland and Delaware. But 2018 ozone season emissions data from those sources (also named in New York's petition) reveal that NO_X emissions continue to exceed the levels that would have resulted if existing controls were operated as the EPA assumed in the modeling for the Determination Rule (at a 0.10 lb/mmBtu rate). The commenter provides data for the units named in the Maryland and Delaware petitions intended to demonstrate that they could have reduced NO_X emissions over the course of the ozone season using the 0.15 lb/mmBtu rate requested in New York's petition, while also noting that several units already meet or approach that limit.

The commenter asserts that additional facilities in New York's petition have similarly been operating with 2018 ozone season NO_X emissions rates higher than the requested 0.15 lb/mmBtu rate, even though ''state-of-the-art'' emissions controls are widely available and assumed by the EPA to be installed in its 2023 modeling. The comment provides a table with data for six individual sources, intended to provide a representative sample of the unoptimized facilities across the region, and then cites to the CSAPR Update where the EPA said that ''state-of-the-art combustion controls such as low-NO_X burners and over-fire air can be installed quickly'' and at an estimated cost of installation of only $500 to $1,200 per ton of NO_X removed. The commenter asserts that an analysis of emissions data reveals that if facilities were to operate at a 0.15 lb/mmBtu NO_X rate, they would have each reduced their NO_X emissions by over 100 tons, considering only the days during the 2018 ozone season in which New York monitors exceeded the NAAQS.

The EPA disagrees with the commenter's assertion that there is sufficient information to grant the petition as to the sources identified in New York's petition. As an initial matter, simply providing data regarding

[92] Notably, the factors used to identify areas *contributing* to a measured violation in the designation process are more complex than the simple air quality threshold used in the EPA's four-step interstate transport framework. In-state sources are not necessarily subject to RACT based solely on a similarly low air quality impact.

[93] The EPA recognizes that states like New York are required, as members of OTR, to impose RACT at major sources statewide, but commenters have not argued that the good neighbor provision requires incorporation of OTR level controls in any state impacting a downwind air quality problem; nor could they. The statute provides a separate provision at CAA section 176A for determining whether it is appropriate to add additional states to the OTR and thus subject them to the additional requirements applicable to such states. The EPA already considered and rejected a petition submitted under this provision to expand the OTR and subject more states to these requirements, which the D.C. Circuit affirmed. *New York* v. *EPA,* 921 F.3d 257 (D.C. Cir. 2019). Congress's decision to include only certain states in the OTR was an acknowledgement that there might be inequities.

how individual units operated in 2018, including those units named in the prior Delaware and Maryland CAA section 126(b) petitions, does not demonstrate either that the units are able to achieve the 0.15 lb/mmBtu rate proposed by the New York petition or, to the extent this is technically achievable, that the measures necessary for the sources to operate at that rate would be cost-effective considering the types of factors the EPA typically evaluates in step 3 of the four-step interstate transport framework. In fact, the commenter concedes that certain units for which it provides data already meet the proposed limit, which further undermines any conclusion that these units should be further controlled under CAA section 126(b).

The EPA further notes, as it did in its denial of the Delaware and Maryland petitions, that the EPA has already taken regulatory action to control emissions from the sources noted in the comment.[94] As described in the CSAPR Update (81 FR 74540–41), control strategies involving turning on and fully operating existing SCR control equipment and installing state-of-the-art combustion controls were accounted for in setting state budgets to address the good neighbor requirements for the 2008 ozone NAAQS for states in the eastern U.S.[95] Recent measured emissions data suggest that those emissions reductions were either successfully achieved at the particular units, or commensurate reductions were achieved from other units within the state, as demonstrated by all states meeting the state budgets (accounting for the year-to-year variability associated with the assurance levels) and relatively low emissions rates seen at large numbers of units across the region (see Excel documents titled, ''2017_csapr_budgets_emissions_and_assurance_levels_11-1-18_3.xlsx'', ''2018_csapr_assurance_provision_0.xlsx'', and ''2017 NO_X Rates for 274 coal units'' in the docket for this action for additional details).[96]

The EPA notes that the petitioner and commenters have provided some unit-level emissions data for a few units (see comment available at EPA–HQ–OAR–2018–0170–0084, Tables 1 and 2) showing some daily emissions rates exceeding the commenter's proposed 0.15 lb/mmBtu rate. However, the fact that a source may have higher emissions on a particular day is not determinative of whether a unit is not fully operating its control equipment and can achieve a lower rate, as there are many reasons why lower rates may not always be achievable on every day (*e.g.,* at low hourly utilization rates there are engineering limitations for flow and temperature for an SCR to operate, *see* Short-Term Emissions Limits Document in the docket for this action for additional details). Similarly, based on unit configuration, technical engineering design efficiency, and the exact nature of the fuel utilized, not all combustion control or post-combustion control equipment is technically capable of achieving a best emissions rate, or fleet-average best rate, under all operating conditions.[97]

As noted by the commenter, the EPA has explained that certain combustion controls (*e.g.,* low-NO_X burners (LNB) and over-fire air) can be installed quickly and at costs of $500 to $1,200 tons on average, neither the petition nor the commenter has demonstrated that there are emissions reductions achievable from these strategies at all the units named in the petition. Rather, as shown in the CSAPR Update Rule EGU NO_X Mitigation Strategies TSD, there is limited EGU reduction potential in the CSAPR Update region (including all states named in the petition) as most sources have already installed state of the art combustion controls.[98] Moreover, these controls may, or may not, be able to achieve the rate identified by the commenter of 0.15 lb/mmBtu, and even for those that can the unit-specific cost may not match the fleetwide average cost discussed earlier. The commenter's calculations of alleged emissions reduction potential from meeting the proposed rate ignore unit-specific technical considerations and corresponding cost by assuming that all facilities could have lowered emissions to a 0.15 lb/mmBtu NO_X emissions rate through combustion control upgrade or post-combustion control optimization. The commenter does not present complete engineering and cost analysis that speaks to whether these units can, and cost-effectively, operate at the proposed level. Moreover, they do not explain how any potential reductions identified at these sources are more cost-effective than mitigation efforts at other upwind sources.

Commenters also misconstrue the EPA's use of 0.10 lb/mmBtu as a rate ceiling rather than a fleet-average when discussing the assumptions underlying the modeling used in the Determination Rule. The EPA specifically noted that 0.10 lb/mmBtu was representative of a fleet-average for units that were not already operating their controls prior to the implementation of the CSAPR Update. It did not reflect a unit-level rate ceiling or cut-off for SCR operation at all units. In the CSAPR Update, the EPA determined that, based on an aggregation of unit-level emissions rates, an average fleet-wide emissions rate of 0.10 lb/mmBtu would represent the optimized operation of SCR controls that were not already being operated and optimized, and set statewide emissions budgets based on this assumption. 81 FR 74543. In concluding that this rate would be appropriate for calculating emissions reduction potential from implementation of this control strategy, the EPA recognized that some units would have optimized rates above that level and some below that level. 81 FR 74543. Thus, the fact that some units are operating above 0.10 lb/mmBtu is not indicative that the sources have additional cost-effective emissions reductions available.

Thus, although the petition and the commenter have identified certain sources operating at rates higher than that proposed by New York in its petition, this is not sufficient information to demonstrate that the sources can or should be further controlled, and thus does not support a finding that such sources significantly contribute to nonattainment or interfere with maintenance of either the 2008 or 2015 ozone NAAQS in New York.

Conclusion

For the reasons described in this section, the EPA is finalizing a determination that material elements in New York's assessment of step 3 are insufficient, such that the EPA cannot conclude that any source or group of sources in any of the named states will significantly contribute to nonattainment or interfere with maintenance in Chautauqua County or the NYMA relative to the 2008 and 2015 ozone NAAQS. Thus, the EPA is finalizing its denial of the petition as to all named sources in all the named upwind states because New York has not met its burden to demonstrate that the sources emit or would emit in violation of the good neighbor provision with respect to either the 2008 or 2015 ozone NAAQS. Although the EPA already has identified a sufficient basis to deny the petition as to Chautauqua County (for the 2008 and 2015 ozone NAAQS) and NYMA (for the 2008 ozone

[94] See 83 FR 50464–70.

[95] See the CSAPR Update technical support document, EGU NO_X Mitigation Strategies Final Rule TSD for additional details.

[96] 2017 CSAPR Budgets Emissions and Assurance Levels Spreadsheet and 2017 CSAPR Budgets Emissions and Assurance Levels Spreadsheet available in the docket and at *https://www.epa.gov/csapr/csapr-assurance-provision.*

[97] *See* National Electric Energy Data System excel document in the docket.

[98] *See* EGU NO_X Mitigation Strategies Final Rule Technical Support Document, August 2016.

NAAQS) at step 1 of the four-step interstate transport framework, the EPA is also relying on our assessment of step 3 as an additional and independent basis for denial as to the petition's claims for these areas.

4. Group of Stationary Sources

The EPA does not need, in this final action, to make any finding or determination for New York's CAA section 126(b) petition with respect to the scope of ''group of stationary sources.'' In the proposal, the EPA solicited comment on whether to deny New York's petition based on the petition's insufficient justification that such a large, undifferentiated number of sources located in numerous upwind states constituted a ''group of stationary sources'' within the context of CAA section 126(b). The proposal offered that a ''group of stationary sources'' could mean stationary sources within a geographic region, sources identified by a specific North American Industry Classification System (NAICS) Code, sources emitting over a defined threshold and/or any combination of these or other defining characteristics. The EPA received comments both supporting and opposing a petition denial based on whether the petition adequately demonstrated that the sources identified in the petition constitute a ''group of stationary sources.'' Based on the other bases for denial, the EPA does not need to reach the question of whether the petitioners' failed to sufficiently justify its interpretation of a ''group of stationary sources'' but notes that the absence of supporting information for such a determination makes the Agency unlikely to side with petitioners on the information provided.

IV. Determinations Under CAA Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) The Agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator;'' or (ii) such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

To the extent a court finds this action to be locally or regionally applicable, the EPA has found that this action is based on a determination of ''nationwide scope and effect'' within the meaning of CAA section 307(b)(1). This action addresses emissions impacts from sources located in nine states, located in multiple EPA Regions and federal judicial circuits. This final action is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different states.

For these reasons, to the extent a court finds this action to be locally or regionally applicable, the Administrator has determined that this final action is based on a determination of nationwide scope and effect for purposes of CAA section 307(b)(1).Thus, pursuant to CAA section 307(b), any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date such final action is published in the **Federal Register**.

In addition, pursuant to sections 307(d)(1)(N) and 307(d)(1)(V) of the CAA, the Administrator has determined that this action is subject to the provisions of CAA section 307(d). CAA section 307(d)(1)(N) provides that section 307(d) applies to, among other things, ''action of the Administrator under CAA section 126 of this title (relating to interstate pollution abatement).'' 42 U.S.C. 7407(d)(1)(N). Under CAA section 307(d)(1)(V), the provisions of CAA section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7407(d)(1)(V). The Agency has complied with procedural requirements of CAA section 307(d) through this rulemaking effort.

V. Statutory Authority

42 U.S.C. 7410, 7426, 7601.

Dated: September 20, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–21207 Filed 10–17–19; 8:45 am]

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