FEDERAL REGISTER

Vol. 84 Tuesday,

No. 107 June 4, 2019

Pages 25679–25974

OFFICE OF THE FEDERAL REGISTER

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2017–0032; Docket No. PRM–170–7; NRC–2018–0172]

RIN 3150–AJ99

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2019

Correction

In rule document 2019–10051, appearing on pages 22331 through 22362, in the issue of Friday, May 17, 2019 make the following correction:

On page 22332, spanning all three columns, in the middle of the page, the equation should read as follows:

$$\frac{\text{Budgeted Resources}}{\text{Mission-Direct FTE Converted to Hours}} = \text{Professional Hourly Rate} \quad \frac{\$759.8 \text{ million}}{1{,}810 \times 1{,}510} = \$278$$

[FR Doc. C1–2019–10051 Filed 6–3–19; 8:45 am]
BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0140; Airspace Docket No. 19–ASO–3]

RIN 2120–AA66

Amendment of Class E Airspace; Fort Payne, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface in Isbell Field Airport, Fort Payne, AL, to accommodate airspace reconfiguration due to the decommissioning of the Fort Payne non-directional radio beacon and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also updates the airport name and geographic coordinates. In addition, this action updates the name and geographic coordinates of Dekalb Regional Medical Center Heliport, which is contained within the legal description of the Isbell Field Airport airspace.

DATES: Effective 0901 UTC, August 15, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface for Isbell Field Airport, Fort Payne, AL, to support standard instrument approach procedures for IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 10451, March 21, 2019) for Docket No. FAA–2019–0140 to amend Class E airspace extending upward from 700 feet above the surface for Isbell Field Airport, Fort Payne, AL, due to the decommissioning of the Fort Payne NDB and cancellation of the NDB approach. Also, the airport's geographic coordinates, as well as the name and geographic coordinates of Dekalb Regional Medical Center Heliport, which is contained within the legal description of the Isbell Field Airport airspace were proposed to be updated.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Isbell Field Airport, Fort Payne, AL, by increasing the airport radius to 10.6 miles (increased from 7.4 miles), eliminating the northwest extension of the airport, and creating a 13.5-mile extension southwest of the airport, to accommodate airspace reconfiguration due to the decommissioning of the Fort Payne NDB and cancellation of the NDB approach. This action also removes the city name below the description header, to comply with FAA Order 7400.2M, Procedures for Handling Airspace Matters; removing the city associated with the airport from the airspace legal description. These changes are necessary for continued safety and management of IFR operations at this airport.

The geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database. Also, the name and geographic coordinates of Dekalb Regional Medical Center Heliport, (formerly Dekalb Medical Center) are updated to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO AL E5 Fort Payne, AL [Amended]

Isbell Field Airport, AL
(Lat. 34°28′25″ N, long. 85°43′17″ W)
Dekalb Regional Medical Center Heliport, AL
(Lat. 34°26′32″ N, long. 85°45′21″ W)

That airspace extending upward from 700 feet above the surface within a 10.6-mile radius of the Isbell Field Airport, and within 4 miles each side of the 220° bearing from the airport, extending from the 10.6-mile radius to 13.6 miles southwest of the airport, and that airspace within a 6-mile radius of Dekalb Regional Medical Center Heliport.

Issued in College Park, Georgia, on May 23, 2019.

Geoff Lelliott,

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

[FR Doc. 2019–11498 Filed 6–3–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–1098]

RIN 100–AA08

Special Local Regulations; Annual Boyne Thunder Poker Run; Charlevoix, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding a special local regulation to increase

safety in the navigable waters of Round Lake and Pine River Channel, Charlevoix, MI, during the annual Boyne Thunder Poker Run. The regulation will allow the Coast Guard Patrol Commander to control vessel traffic during the event in this small and restricted waterway. The regulation will be enforced during the day of the event. The date and time will be announced via a Notice of Enforcement.

DATES: This regulation is effective July 13, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket go to *http://www.regulations.gov.* Type the docket number (USCG–2018–1098) 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 Blackledge, Waterways Management, Coast Guard Sector Sault Sainte Marie, U.S. Coast Guard; telephone 906–253–2443, email *Onnalee.A.Blackledge@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Annual Boyne Thunder Poker Run is a charity marine event occurring in the month of July with a route that runs from Boyne City out to Lake Michigan and back to Boyne City. This event, occurring annually for the past 15 years, includes approximately 100 participants in offshore type power vessels. Round Lake and Pine River Channel are small restricted waterways that normally have a variety of recreational users and a commercial ferry that provides service to Beaver Island. This mix of vessels in close proximity to the event warrants additional safety measures. In response, the Coast Guard published a notice of proposed rulemaking (NPRM) on March 11, 2019 (84 FR 8641). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this Special Local Regulation. During the comment period that ended May 10th 2019, we received no comments.

The regulation will be enforced during the day of the event. The date and time will be announced via a Notice of Enforcement published in the **Federal Register**.

The legal basis for this final rulemaking is found at 46 U.S.C. 70041; 33 CFR 1.05–1.

III. Discussion of Proposed Rule

We received no comments from the NPRM published March 11, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. The Captain of the Port Sault Sainte Marie (COTP) has determined that adding the Annual Boyne City Poker Run to the list of Special Local Regulations in the navigable waters of Round Lake and Pine River Channel in Charlevoix, MI is the most practical way to ensure the safety of the boating public.

IV. 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, the rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day for the Special Local Regulation. Vessel traffic will be able to safely transit through the regulated area, with the permission of the Patrol Commander, which will impact a small designated area within the COTP zone for a short duration of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management 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 made a determination 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 prohibits vessels from entering, transiting through, or anchoring within the regulated area without the permission of the Coast Guard Patrol Commander. Normally such actions are categorically excluded from further review under paragraph L61 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.929 to read as follows:

§ 100.929 Special Local Regulations; Annual Boyne Thunder Poker Run; Charlevoix, MI.

(a) *Regulated area.* The special local regulations in this section apply to all U.S. navigable waters of Round Lake and Pine River Channel, Charlevoix, MI, within an area bordered by a line at the entrance of the Pine River Channel charted in position 45°19′15″ N, 085°15′55″ W to 45°19′13″ N, 085°15′55″ W to the southeast end of Round Lake charted in position 45°18′57″ N, 085°14′49″ W to 45°18′56″ N, 085°14′50″ W.

(b) *Special local regulation.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area in this section without the permission of the Coast Guard Patrol Commander.

(c) *Enforcement period.* The Coast Guard will issue a Notice of Enforcement with the exact time and date in July that the regulated area in this section will be enforced.

Dated: May 24, 2019.

P.S. Nelson,

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

[FR Doc. 2019–11527 Filed 6–3–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID: ED–2018–OESE–0122; CFDA Number: 84.356A]

Final Definitions and Requirements—Alaska Native Education (ANE) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final definitions and requirements.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) announces definitions and requirements under the ANE program. The Assistant Secretary may use one or more of these definitions and requirements for competitions in fiscal year (FY) 2019 and later years. We are establishing these definitions and requirements to clarify the eligibility requirements for the program, based upon changes that the Every Student Succeeds Act (ESSA) made to the Elementary and Secondary Act of 1965 (ESEA).

DATES: These definitions and requirements are effective July 5, 2019.

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E222, Washington, DC 20202. Telephone: (202) 260–1979. Email: *OESE.ASKANEP@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the ANE program is to support innovative projects that recognize and address the unique education needs of Alaska Natives. These projects must include activities authorized under section 6304(a)(2) of the ESEA, and may include one or more activities authorized under section 6304(a)(3) of the ESEA.

Program Authority: Title VI, part C of the ESEA (20 U.S.C. 7541–7546).

We published a notice of proposed definitions and requirements for this program (NPP) in the **Federal Register** on December 27, 2018 (83 FR 66655). That document contained background information and our reasons for proposing the particular definitions and requirements.

There is one change to the proposed definitions and requirements in the final definitions and requirements. We are allowing ''experience operating programs that fulfill the purposes of this part'' to include experience operating either Federal or non-Federal grants serving Alaska Natives. In addition, we have clarified the definition of ''official charter or sanction,'' the Group Application Requirement, and the definition of ''experience operating programs that fulfill the purposes of the ANE program.''

Public Comment: In response to our invitation in the NPP, two parties submitted comments on the proposed definitions and requirements.

Analysis of Comments: An analysis of the comments and of any changes in the proposed definitions and requirements since publication of the NPP follows.

Comment: One commenter noted that education service agencies (ESAs) play an important role in the implementation of the ESEA. Specifically, this commenter appeared to request that ESEA section 6304(a)(1)(B)(i) be modified to include ESAs as one of the entities that could serve as a required partner for Alaska Native Organizations (ANOs) without experience operating ANE programs. The commenter recommended a corresponding change to the Group Application Documentation requirement, asking that ESAs be added to the list of entities with whom an ANO may partner.

Discussion: While the Department agrees that ESAs can play an important role in the implementation of ESEA programs, the Department cannot modify statutory language. Such a change would require a legislative change. Similarly, because the Group Application Documentation requirement is based directly on the statutory list of required partners, we decline to modify that requirement to add ESAs to the list of partner entities.

Changes: None.

Comment: None.

Discussion: Upon further review, we realized that language in the definition of ''official charter or sanction'' and in the Group Application Requirement was unclear. Both provisions referred to agreements that must be signed and dated ''within 120 days of the date of submission of the application.'' This language did not specify whether the agreements needed to be signed and dated before the submission of the application or could be signed and dated after the submission of the application.

Changes: We have changed both the definition of ''official charter or sanction'' and the Group Application Requirement to provide that the agreements must be signed and dated within 120 days prior to the date of submission of the application.

Comment: One commenter proposed that we revise the definition of ''experience operating programs that fulfill the purposes of the ANE program'' to include programs that are not funded with Federal grants.

Discussion: The Department agrees that recipients of non-Federal grants operating programs that fulfill the purposes of the ANE program may have expertise that is relevant to Alaska Native education programs. The Department acknowledges that the knowledge and skills required to manage ANE program grants can also be demonstrated with experience managing non-Department grants. We also believe this change will result in more diversity among applicants, including novice applicants.

Changes: We have changed the definition to include eligibility for entities that have experience managing either Federal or non-Federal grants.

Comment: None.

Discussion: Upon further review, we realized the definition of ''experience operating programs that fulfill the purposes of the ANE program'' did not make clear whether the four-year timeframe in the definition applies to ANE grants or only to other grants that fulfill the purposes of the ANE program.

Changes: We have modified the definition to clarify that the four-year timeframe applies to both ANE grants and to other grants focused on meeting the unique education needs of Alaska Native children and families in Alaska.

Final Definitions

The Assistant Secretary establishes the following definitions for the purposes of the ANE program. We may apply one or more of these definitions in any year in which this program is in effect.

Experience operating programs that fulfill the purposes of the ANE program means that, within the past four years, the entity has received and satisfactorily administered, in compliance with applicable terms and conditions, a grant under the ANE program or another Federal or non-Federal program that focused on meeting the unique education needs of Alaska Native children and families in Alaska.

Official charter or sanction means a signed letter or written agreement from an Alaska Native Tribe or Alaska Native Organization (ANO) that is dated within 120 days prior to the date of the submission of the application and expressly (1) authorizes the applicant to conduct activities authorized under the ANE program and (2) describes the nature of those activities.

Predominately governed by Alaska Natives means that at least 80 percent of the individuals on the entity's governing board (*i.e.,* the board elected or appointed to direct the policies of the organization) are Alaska Natives.

Final Requirements

The Assistant Secretary establishes the following requirements for the purposes of the ANE program. We may apply one or both of these requirements in any year in which this program is in effect.

Requirement 1—Group Application Requirement.

An applicant that applies as part of a partnership must meet this requirement.

(1) An ANO that applies for a grant in partnership with a State educational agency (SEA) or local educational agency (LEA) must serve as the fiscal agent for the project.

(2) Group applications under the ANE program must include a partnership agreement that includes a Memorandum of Understanding or a Memorandum of Agreement (MOU/MOA) between the members of the partnership identified and discussed in the grant application. Each MOU/MOA must—

(i) Be signed by all partners, and dated within 120 days prior to the date of the submission of the application;

(ii) Clearly outline the work to be completed by each partner that will participate in the grant in order to accomplish the goals and objectives of the project; and

(iii) Demonstrate an alignment between the activities, roles, and responsibilities described in the grant application for each of the partners in the partnership agreement.

Requirement 2—Applicants Establishing Eligibility through a Charter or Sanction from an Alaska Native Tribe or ANO.

For an entity that does not meet the eligibility requirements for an ANO, established in sections 6304–(a)(1) and 6306(2) of the ESEA and the definitions in this notice, and that seeks to establish eligibility through a charter or sanction provided by an Alaska Native Tribe or ANO as required under section 6304(a)(1)(C)(ii) of the ESEA, the following documentation is required:

(1) Written documentation demonstrating that the entity is physically located in the State of Alaska.

(2) Written documentation demonstrating that the entity has experience operating programs that fulfill the purposes of the ANE program.

(3) Written documentation demonstrating that the entity is predominately governed by Alaska Natives, including the total number, names, and Tribal affiliations of members of the governing board.

(4) A copy of the official charter or sanction provided to the entity by an Alaska Native Tribe or ANO.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose

to use one or more of these definitions and requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771 Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment, or otherwise promulgates, that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the final regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final definitions and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this final regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits

We have determined that these final definitions and requirements will impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these definitions and requirements are limited to paperwork burden related to preparing an application. The potential benefits of implementing the program outweighs any costs incurred by applicants, and the costs of actually carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation are not excessively burdensome for eligible applicants, including small entities.

Paperwork Reduction Act of 1995: These final definitions and requirements do not contain any information collection requirements.

Regulatory Flexibility Act: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

Although some of the ANOs, LEAs, and other entities that receive ANE program funds qualify as small entities under this definition, the final definitions and requirements will not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the final definitions and requirements is limited to the costs related to providing the documentation outlined in the final definitions and requirements when preparing an application and that those costs will not be significant. Participation in the ANE program is voluntary.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at:

www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–11525 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2014–0005]

RIN 1660–AA83

Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule; correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) is correcting a final rule that published in the **Federal Register** on March 21, 2019. The rule revises the Individual Assistance factors FEMA uses to measure the severity, magnitude, and impact of a disaster. This document corrects two typographical errors in the preamble to the final rule and corrects the authority citation.

DATES: Effective June 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Millican, FEMA, Individual Assistance Division, 500 C Street SW, Washington, DC 20472–3100, (phone) 202–212–3221 or (email) *FEMA-IA-Regulations@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2019–05388 appearing on page 10632 in the **Federal Register** of Thursday, March 21, 2019, the following corrections are made:

1. On page 10647, in the third column, in the first full paragraph, ''highlight'' is corrected to read ''highly''. that shows that TTR and population are highly correlated.''

2. On page 10653, in the first column, in footnote 61, in the first sentence, ''Table 6'' is corrected to read ''Table 5''.

PART 206—[CORRECTED]

■ 3. On page 10663, in the second column, in amendatory instruction 1, the authority citation for part 206 is corrected to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1.

Peter Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–11656 Filed 5–31–19; 4:15 pm]

BILLING CODE 9111–23–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2, 5, and 15

[ET Docket No. 18–21, RM–11795, FCC 19–19]

Spectrum Horizons

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission took steps to provide new opportunities for innovators and experimenters to develop new equipment and applications for spectrum between 95 GHz and 3 THz, frequencies that only recently are becoming well-suited for the development and deployment of new active communications services and applications. The Commission adopt rules for a new class of experimental licenses available for the spectrum above 95 GHz that provide for increased flexibility. In addition, the Commission will make 21.2 gigahertz of spectrum in the 116–123 GHz band, the 174.8–182 GHz band, the 185–190 GHz band, and the 244–246 GHz bands for unlicensed use under rules with technical parameters similar to those currently in place for unlicensed operation in the 57–71 GHz band.

DATES: Effective July 5, 2019, except for §§ 5.59, 5.77, 5.121, 5.702, 5.703, 5.704, 5.705 and 15.258, which are delayed. We will publish a document in the **Federal Register** announcing the effective dates.

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

FOR FURTHER INFORMATION CONTACT: Mr. Brian Butler of the Office of Engineering and Technology, Policy and Rules Division, at (202) 418–2702, or *Brian.Butler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket No. 18–21, and RM–11795, FCC 19–19, adopted March 15, 2019 and released March 21, 2019. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554, or by downloading the text from the Commission's website at *https://www.fcc.gov/document/fcc-opens-spectrum-horizons-new-services-technologies-0.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

Spectrum Horizons Experimental Radio Licenses

The Commission adopt rules for a new experimental radio license, the Spectrum Horizons Experimental Radio License (Spectrum Horizons License), that will be available for experiments and demonstrations of equipment designed to operate exclusively on any frequency above 95 GHz. The Spectrum Horizons License rules will incorporate the proposals that the Commission made in the Notice of Proposed Rulemaking (NPRM) in this proceeding (83 FR 13888). Specifically, the Spectrum Horizons License will differ from other experimental radio licenses by providing for, among other things, broad eligibility, a longer term, and additional flexibility to market devices. The Commission expects that, collectively, these Spectrum Horizons License features should promote a more rapid development of new products and services that will reach a larger number and wider variety of users than it would be possible under the existing experimental licensing rules.

1. *Available Frequencies.* Applicants for Spectrum Horizons Licenses may request authorization on any frequency within the 95 GHz to 3 THz frequency range. Given the unique characteristics of these bands, and concern that it could stifle innovation or limit an applicant

from developing new and novel methods for coexisting with existing services, the Commission choose not to, by rule, preclude the use of any specific frequencies. While the Commission will not require any specific compatibility analysis, it will require, as proposed, any application for a Spectrum Horizons License to include, as a prerequisite to grant, a narrative statement that sufficiently explains the proposed new technology/potential new service and an interference analysis.

2. All bands between 95 GHz and 275 GHz are allocated on a shared basis for federal and non-federal use. Above 275 GHz, while there are no allocations, a number of bands are identified for use by passive services in footnote US 565. Accordingly, Spectrum Horizons Licenses, will only be granted on a non-interfering basis (as is the case with all experimental radio licenses), only following coordination with federal users through the National Telecommunications and Information Administration (NTIA) and the Interdepartment Radio Advisory Committee (IRAC) process. Unless a sufficient methodology for preventing harmful interference is detailed, such operations will not be permitted. In this regard, the Commission also note that certain parameters of any experimental license applications will require to be disclosed publicly, including frequency(s), types of emissions, power, and location. Thus, interested Federal parties will have full information available to evaluate whether propose experimental licenses are compatible with existing federal operations.

3. Moreover, Spectrum Horizons License applicants that propose to use spectrum exclusively allocated for passive use(s), must provide an explanation why nearby bands with non-passive allocations are not appropriate or adequate for the experiment and acknowledge that they intend to transition any potential long-term use to a band with appropriate allocations. The Commission adopt this approach rather than prohibiting use of the passive bands because it does not want to unnecessarily hobble valuable research in situations that pose no significant risk to incumbent operations. The coordination of experimental use of the passive frequencies through the IRAC process will provide an opportunity for dialogue between affected parties and applicants which in many cases will provide a path for coexistence with the passive services.

4. As with the passive bands, the Commission did not adopt a rule precluding experimental use of the bands allocated for amateur use or impose blanket special coordination procedures in such bands. Given that both the amateur radio service and the experimental licensing program are designed to contribute to the advancement of radio knowledge, the Commission see value in continuing to allow licensed operations under both parts 5 and 97 of its rules because doing so supports the objectives that are common to both rule parts.

5. Finally, the rules provide that the Commission may, at any time without notice or hearing, modify or cancel a Spectrum Horizons License, if, in its discretion the need for such action arises. The Commission note that cancelling a license is an action of ''last resort'' and the Commission routinely works with parties to resolve potential or actual issues prior to issuing an experimental license or in rare instances of actual interference, by authorizing modifications that allow for interference-free operations.

6. *Eligibility.* The Commission will make Spectrum Horizons Licenses broadly available to persons qualified to conduct the types of operations described in existing experimental radio service rules. The Commission believe these same eligibility requirements will encourage widespread experimentation in the bands above 95 GHz while providing adequate safeguards that such experimenters have the knowledge necessary to ensure incumbent services are protected from harmful interference. TIA suggest that Spectrum Horizons License applicants be required to establish their eligibility for these licenses by including a description of their technical qualifications and prior experience in RF issues with their application unless they already meet the specific eligibility categories associated with an Experimental Program License. The Commission rejects this proposal as overly prescriptive for a band whose users and use models are still evolving. Thus, Spectrum Horizons License applicants' qualifications will be considered on a case-by-case basis as part of the general application process and the Commission will seek any additional information as necessary.

7. *License Term and Interim Reporting Requirements.* The Commission adopt its proposal to authorize Spectrum Horizons Licenses for the longest license term—ten years—of any experimental license to encourage entrepreneurs to invest in this largely untested spectrum and yield more useful long-term information and data in support of subsequent rulemaking activity or waiver requests for operations in these bands. The Commission believes that a single ten-year grant issued under the conditions outlined above, as opposed to a five-year grant with an expectation of renewal, is less burdensome and more efficient for both the licensees and the Commission staff. The Commission will not provide for the renewal of a Spectrum Horizons License, as it determines the ten years is sufficient time to determine whether the experimental operations warrant the authorization of more permanent use through either a petition for rulemaking or a waiver request. In this regard, the Commission also note that there are no assurances that experimentation will lead to the establishment of an authorized service.

8. The Commission also adopt a requirement that Spectrum Horizons licensees submit an interim report on the progress of the experiment no later than five years from the date of grant. Given the expected wide variety of innovative experiments in the bands above 95 GHz, the Commission finds that interim reports will provide it with an awareness of ongoing technological developments as it contemplates rulemaking proposals and will enable the public to better assess innovative uses of the bands, thus encouraging further experimentation.

9. *Geographic Area.* Consistent with current practice for experimental licensing, Spectrum Horizons License applicants will be able to request operations over any area they deem appropriate for their experiment. Applicants have the burden of justifying their intended experimental operations, including the geographic area over which they intend to operate and any methods for avoiding causing harmful interference to other spectrum users. In turn, the Commission may impose limitations on the geographic extent of a license as necessary based upon the specific parameters requested and other circumstances, including recommendations received via consultation with NTIA. The Commission finds that concerns are best address on a case-by-case basis and a blanket rule imposing geographic area restrictions for Spectrum Horizons Licenses do not warrant.

10. *Marketing.* Under the rules the Commission adopts, Spectrum Horizons licensees will permit to market experimental devices designed to operate in the bands above 95 GHz via direct sale. These rules diverge from the existing market trial rules which only permit devices to sell to other holders of experimental licenses or to lease devices to trial participants, by allowing direct sales to members of the general public. Additionally, the Commission

will not limit the number of devices a licensee can market as part of the experiment. The Commission offers this added marketing flexibility because the characteristics of signals in the bands above 95 GHz effectively limit the range of each device to such an extent that a larger number of devices can operate without increasing the potential of harmful interference to authorized services.

11. The Commission adopts measures to ensure that licensees are able to exhibit control over their equipment. Specifically, the Commission will require licensees to ensure that trial devices are either render inoperable or retrieve at the conclusion of the trial. Additionally, each device sold under this program must be labeled as ''Authorized Under An Experimental License and May be Subject to Further Conditions Including Termination of Operation'' and carry with it a licensee-assigned equipment ID number. While the rules do not include a specific format for the identifying data, licensees who take advantage of these marketing provisions must uniquely identify each device (*e.g.,* through a serial number) in a manner that will enable them to easily track each one. Finally, at the time of sale, the licensee is required to provide trial participants with a written disclosure that clearly states that the equipment being purchased is part of an experiment that may be terminated at any time by the licensee or the Commission, and the device will be surrendered or rendered inoperable at the conclusion of the experiment.

12. While the Commission acknowledged the concerns of some, such as Boeing and the National Radio Astronomy Observatory (NRAO) that the widespread marketing of experimental devices could lead to interference and other difficulties related to unauthorized devices, it believed that, when considered as a whole, the various requirements imposed on Spectrum Horizon licensees and its application review process would ensure the integrity of experimental operations above 95 GHz.

13. As with other experimental license applications, applicants for a Spectrum Horizons License will require to show how the experimental operations (and any related devices) will be controlled so that they do not cause harmful interference to other services. Further, as with all experimental licenses, Spectrum Horizons License operations will not be entitled to exclusive use; will not be protected from harmful interference from allocated services; and will be prohibited from causing harmful interference to stations of allocated services. In addition, the Commission has broad authority to place specific conditions on experimental licenses to minimize the risk of causing harmful interference to incumbent spectrum users. Similarly, NTIA's Interdepartment Radio Advisory Committee (IRAC) may recommend license conditions to the extent the frequencies in question are shared as part of a co-primary allocation for federal and non-federal use. The Commission will not impose specific requirements by rule on Spectrum Horizons licensees regarding how to control their experiment, but we do point out that the licensee remains responsible to ensure compliance with our rules.

Unlicensed Operations

14. The Commission adopts rules designating 21.2 gigahertz of the Spectrum Horizons bands for unlicensed device use: the 116–123 GHz band, the 174.8–182 GHz band, the 185–190 GHz band, and the 244–246 GHz band. In keeping with the Commission's unlicensed device rules, devices using these bands will operate on a non-interference basis while protecting both passive and active services. The Commission asserted that these multiple bands of spectrum for unlicensed use should be sufficient to enable development of new unlicensed devices and applications and it did not believe that providing additional frequency bands for unlicensed device operation above 95 GHz was necessary at this time. However, it did indicate a willingness to reassess the spectrum allocations based on how uses develop and revisit this issue at a later date.

15. *Coexistence Issues.* Several bands that contain or are adjacent to passive Earth exploration-satellite service and radio astronomy service allocations, acknowledging that these services require stringent protection levels.

16. *Radio Astronomy.* The Commission find that unlicensed devices can co-exist with radio astronomy in the same and adjacent spectrum bands above 95 GHz because of factors such as the high atmospheric losses associated with these frequency bands and the use of highly directional antennas. Most bands being made available for unlicensed devices are adjacent to radio astronomy allocations. The only frequency band in which unlicensed devices will be permitted to operate co-channel with radio astronomy is 244–246 GHz. As it noted above, the Commission pointed out that this band is also designated for use by ISM devices which are not subject to field strength limits within the band—unlicensed devices would operate at significantly lower power levels than ISM devices.

17. *Earth Exploration-Satellite Service.* As an initial matter, the Commission prohibits unlicensed devices above 95 GHz from operating on aircraft. To assess whether unlicensed devices can co-exist with the Earth exploration-satellite service, the Commission determined how many unlicensed devices would produce aggregate emissions that would exceed the harmful interference protection threshold, as set forth in ITU–R RS.2017, for the 174.8–182 GHz and 185–190 GHz bands. This analysis showed that up to 42,704 outdoor unlicensed devices can operate simultaneously at maximum power per square kilometer and still meet the protection levels for a vertical satellite scan of an Earth exploration satellite and 96.5 million unlicensed devices can operate simultaneously at maximum power per square kilometer for an angle scan without causing harmful interference. Based on these large device densities, the Commission concluded that the potential for harmful interference to Earth exploration satellite operations is negligible. The same analysis is also applicable to the 116–122 GHz band but would result in an even lower likelihood of harmful interference because that band is subject to 20 dB higher atmospheric attenuation than the 174.8–182 GHz and 185–190 GHz bands.

18. To assess unlicensed device compatibility in bands adjacent to Earth exploration-satellite bands, the Commission's analysis shows that a nadir scan sensor can coexist with up to 3.38 billion simultaneously operating unlicensed devices per square kilometer in each of the 174.8–182 GHz and 185–190 GHz bands without causing harmful interference to EESS operations in the 182–185 GHz band. Similarly, for limb sounder sensing, the Commission's analysis shows that up to 2.42×10^{16} unlicensed devices can simultaneously operate per square kilometer without causing harmful interference to EESS operations in 182–185 GHz band. The Commission does not expect unlicensed devices in these bands to ever approach such densities and is confident that unlicensed operations at the adopted power levels adopted can successfully coexist with the passive services.

19. *Space Research Service.* This passive service has no receivers on Earth and those in space are aimed away from Earth into deep space. Hence, there are no interference concerns for this service in these bands. Further, there are

no current or anticipated space research operations in the 174.8–182 GHz, and 185–190 GHz bands, so potential harmful interference from unlicensed operations in those bands is essentially irrelevant to SRS, despite the nominal SRS allocation there.

20. *Amateur Radio.* Amateur services have a secondary allocation in bands designated for ISM equipment, including, in this case, the 122.5–123 GHz band. ARRL states in its comments that radio amateurs already must plan for ISM emissions and those emissions generally have not caused harmful interference to amateur operations. The Commission believed the addition of unlicensed devices would be unlikely to have a marked impact on the noise environment as compared to high-power ISM devices and declined to adopt any specific rules for unlicensed devices in the amateur radio allocations.

21. *Other allocations.* There are also a number of active service allocations in the bands the Commission identified for unlicensed use. Some, such as the fixed service, the mobile service, and the radiolocation and radionavigation services cannot be deployed because there are no service rules in place. Thus, for these cases, the Commission concluded that protection criteria need not be adopted at this time. The Commission also noted that the inter-satellite service also does not have service rules in place, but operations have been permitted on a case-by-case basis. Like the space research service, the inter-satellite service operates solely between satellites in space and therefore the Commission asserted that there is no significant risk of harmful interference from relatively low power unlicensed devices operating on the Earth, even if terrestrial operations were to occur in high volumes.

Technical Requirements

22. The Commission adopts, with certain modifications, technical rules for unlicensed operations in the bands 116–123 GHz, 174.8–182 GHz, 185–190 GHz, and 244–246 GHz, under technical parameters similar to those for unlicensed operation in the 57–71 GHz band, consistent with the rules proposed in the NPRM. While a number of commenters supported unlicensed operation in these bands at the power levels proposed in the NPRM, the Commission did acknowledge several parties' concerns about the potential for unlicensed operation to cause interference. However, it ultimately concluded that unlicensed devices can operate in these frequency bands at the power levels proposed in the NPRM without causing harmful interference to services in these or adjacent bands.

23. As proposed in the NPRM, the new § 15.258 adopted by the Commission permits device operation in these bands with a maximum EIRP of 40 dBm (average) and 43 dBm (peak), measured with a detection bandwidth that encompasses the band of operation. The adopted rule also permits outdoor fixed point-to-point devices to operate with a higher maximum EIRP of 82 dBm (average) and 85 dBm (peak), also measured with a detection bandwidth that encompasses the band of operation. In order to operate under the higher power limits, devices must utilize antennas with a minimum gain of 51 dBi, with a 2 dB reduction in the maximum permissible EIRP for each dB the antenna gain falls below 51 dBi. The Commission determined that these highly directional antennas with very narrow beamwidths will ensure that the likelihood of harmful interference is minimized. The Commission will not at this time permit even higher power levels as suggested by IEEE 802, concluding that the adopted power levels will allow it to make additional spectrum available for new and innovative unlicensed devices while protecting other uses of the bands.

24. The Commission specified power limits for devices operating in these bands in terms of EIRP and did not specify a maximum conducted power limit. Devices operating in frequency bands above 95 GHz will likely not have a detachable antenna or port that could be used for measuring conducted power, making such measurements difficult. In addition, because the interference potential of a device is a function of its EIRP, rather than the transmitter conducted power, it is necessary to only specify EIRP limits. Further, because devices are unlikely to have interchangeable antennas, a conducted output power limit is not necessary to reduce the likelihood that a user could install a higher-gain antenna and substantially raise the EIRP, and interference potential, of a device. The Commission also required devices that operate with an emission bandwidth of less than 100 megahertz to reduce their maximum power to achieve a power spectral density no greater than that of a device operating with a bandwidth of 100 megahertz.

25. As proposed, the Commission adopts an out-of-band emission limit of 90 picowatts per square centimeter at a distance of three meters applicable at frequencies above 40 GHz, finding this emission limit sufficient to protect radio astronomy and other services operating in adjacent bands. While the Commission initially proposed specifying 200 GHz as the upper limit for measuring compliance with the out-of-band emission requirements, the Commission recognizes the concerns of parties that note such a limit would be below the highest frequency band (244–246 GHz) being designated for unlicensed operation. In this regard, the Commission agreed with Underwriters Laboratory that out-of-band emissions measurements of unlicensed devices operating above 95 GHz should be required up to the third harmonic of the fundamental frequency of operation in order to ensure that at least one even order and one odd order harmonic are measured. The Commission also agreed with Underwriters Laboratory that it should specify an upper frequency limit for making measurements that corresponds to the upper frequency limit, *e.g.,* 750 GHz, of standard waveguides used in making compliance measurements. Accordingly, the Commission will require unlicensed devices operating under new § 15.258 to comply with an out-of-band emission limit of 90 picowatts per square centimeter at a distance of three meters. Additionally, the Commission also amended § 15.33 to require measurements of out-of-band emissions from devices operating above 95 GHz at frequencies up to the third harmonic of the highest fundamental frequency or 750 GHz, whichever is lower. Finally, consistent with the requirements for most other part 15 intentional radiators, the Commission require devices to limit out-of-band radiated emissions at frequencies below 40 GHz to the limits specified in § 15.209(a).

26. The Commission also adopted other operational restrictions for devices in the 116–123 GHz, 174.8–182 GHz, 185–190 GHz, and 244–246 GHz bands that are similar to those for unlicensed devices in the 57–71 GHz band. Specifically, the Commission will not permit equipment to operate on satellites or onboard aircraft. This restriction, consistent with the requests of IEEE and CORF, will limit the potential for unlicensed devices to cause interference to radio astronomy and other passive services. Additionally, the Commission, recognizing that the 182–185 GHz band is a critical band for passive sensing and transmissions in the band are prohibited under footnote US 246, adopted the requirement that equipment operating in the 174.8–182 GHz and 185–190 GHz bands should not be designed to operate in the 182–185 GHz band. Additionally, because devices operating above 95 GHz are a new technology, the Commission

took a conservative approach in protecting radio services from harmful interference by not adopting the exemptions proposed in the NPRM that would have allowed operation onboard aircraft under certain conditions.

27. In the NPRM the Commission kept the door open on whether to broaden this proceeding to consider a proposal in a rulemaking petition filed by James Edwin Whedbee to allow unlicensed operations throughout the 95–1000 GHz range. With the exception of the petitioner himself, no other parties addressed this proposal. Given the apparent lack of interest and the Commission's decision to make 21.2 gigahertz of spectrum available for unlicensed use, the Commission was not persuaded that Whedbee's petition, to the extent it remains pending, warrants further consideration, and denied it.

Procedural Matters

28. *Final Regulatory Flexibility Analysis.*—As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) regarding the possible significant economic impact on small entities of the policies and rules adopted in this First Report and Order, which is found in Appendix B of the link provided in the beginning of this **SUPPLEMENTARY INFORMATION** section. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the First Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

29. *Paperwork Reduction Act Analysis.*—This document contained new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought, but did not receive specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

Ordering Clauses

31. *It is ordered* that pursuant to sections 4(i), 7(a), 301, 302, 303, 307, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 302a, 303, 307, 310, this Report and Order *is adopted.*

32. *It is further ordered* that the rules and requirements adopted herein *will become effective* 30 days from the date of publication in the **Federal Register** with the exception of the modifications of §§ 5.59, 5.77, 5.121, 5.702, 5.703, 5.704, 5.705 and 15.258 of the rules which contain new or modified information collection requirements that require review by the OMB under the PRA, which *will become effective* after OMB review and approval, on the effective date specified in a document that the Commission will publish in the **Federal Register** announcing such approval and effective date.

33. *It is further ordered,* pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 1.407 of the Commission's Rules, that the Petition for Rulemaking of James Edwin Whedbee filed on November 5, 2013 is *denied* as described herein and Docket RM–11795 *is terminated.*

34. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration and to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 parts 2, 5, and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.803 by revising paragraph (c)(1) to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

* * * * *

(c) * * *

(1) Activities conducted under market trials pursuant to subpart H of part 5 of this chapter or in accordance with a Spectrum Horizons experimental radio license issued pursuant to subpart I of part 5.

* * * * *

■ 3. Amend § 2.1091 by revising paragraph (c)(2) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: Mobile devices.

* * * * *

(c) * * *

(2) Unlicensed personal communications service devices, unlicensed millimeter-wave devices, and unlicensed NII devices authorized under §§ 15.255(g), 15.257(g), 15.258, 15.319(i), and 15.407(f) of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093(b) requiring evaluation under the provisions of that section.

* * * * *

■ 4. Amend § 2.1093 by revising paragraph (c)(1) to read as follows

§ 2.1093 Radiofrequency radiation exposure evaluation: Portable devices.

* * * * *

(c) * * *

(1) Portable devices that operate in the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Service (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible Use Service pursuant to part 30 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and

the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), the Medical Device Radiocommunication Service (MedRadio), and the 76–81 GHz Band Radar Service pursuant to subparts H, I, and M of part 95 of this chapter, respectively; unlicensed personal communication service, unlicensed NII devices and millimeter-wave devices authorized under §§ 15.255(g), 15.257(g), 15.258, 15.319(i), and 15.407(f) of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter; are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use.

* * * * *

PART 5—EXPERIMENTAL RADIO SERVICE

■ 5. The authority citation for part 5 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 336.

■ 6. Amend § 5.3 by revising paragraph (l) and adding paragraph (m) to read as follows:

§ 5.3 Scope of service.

* * * * *

(l) Marketing of equipment designed to operate only on frequencies above 95 GHz.

(m) Types of experiments that are not specifically covered under paragraphs (a) through (l) of this section will be considered upon demonstration of need for such additional types of experiments.

■ 7. Amend § 5.54 by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as follows:

§ 5.54 Types of authorizations available.

* * * * *

(f) *Spectrum Horizons experimental radio license.* This type of license is issued for the purpose of testing and marketing devices on frequencies above 95 GHz, where there are no existing service rules.

* * * * *

■ 8. Amend § 5.55 by revising paragraphs (c) and (d) to read as follows:

§ 5.55 Filing of applications.

* * * * *

(c) Each application for station authorization shall be specific and complete with regard to the information required by the application form and this part.

(1) Conventional and Spectrum Horizons license and STA applications shall be specific as to station location, proposed equipment, power, antenna height, and operating frequencies.

(2) Broadcast license applicants shall comply with the requirements in subpart D of this part; Program license applicants shall comply with the requirements in subpart E of this part; Medical Testing license applicants shall comply with the requirements in subpart F of this part; Compliance Testing license applicants shall comply with the requirements in subpart G of this part; and Spectrum Horizons license applicants shall comply with the requirements in subpart I of this part.

(d) Filing conventional, program, medical, compliance testing, and Spectrum Horizons experimental radio license applications:

(1) Applications for radio station authorization shall be submitted electronically through the Office of Engineering and Technology website *http://www.fcc.gov/els.*

(2) Applications for special temporary authorization shall be filed in accordance with the procedures of § 5.61.

(3) Any correspondence relating thereto that cannot be submitted electronically shall instead be submitted to the Commission's Office of Engineering and Technology, Washington, DC 20554.

* * * * *

■ 9. Amend § 5.59 by revising the heading of paragraph (a) to read as follows:

§ 5.59 Forms to be used.

(a) *Application for conventional, program, medical, compliance testing, and Spectrum Horizons experimental radio licenses*—* * *

* * * * *

■ 10. Amend § 5.71 by adding paragraph (d) to read as follows:

§ 5.71 License period.

* * * * *

(d) *Spectrum Horizons experimental radio license.* Licenses are issued for a term of 10 years and may not be renewed.

■ 11. Amend § 5.77 by revising paragraphs (a) introductory text and (b) to read as follows:

§ 5.77 Change in equipment and emission characteristics.

(a) The licensee of a conventional, broadcast, or Spectrum Horizons experimental radio station may make any changes in equipment that are deemed desirable or necessary provided:

* * * * *

(b) For conventional or Spectrum Horizons experimental radio stations, the changes permitted in paragraph (a) of this section may be made without prior authorization from the Commission provided that the licensee supplements its application file with a description of such change. If the licensee wants these emission changes to become a permanent part of the license, an application for modification must be filed.

* * * * *

■ 12. Amend § 5.79 by revising the section heading and paragraph (a) to read as follows:

§ 5.79 Transfer and assignment of station authorization for conventional, program, medical testing, Spectrum Horizons, and compliance testing experimental radio licenses.

(a) A station authorization for a conventional experimental radio license or Spectrum Horizons experimental radio license, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission decides that such a transfer is in the public interest and gives its consent in writing.

* * * * *

■ 13. Amend § 5.107 by adding paragraph (f) to read as follows:

§ 5.107 Transmitter control requirements.

* * * * *

(f) *Spectrum Horizons experimental radio licenses.* The licensee shall ensure that transmissions are in conformance with the requirements in subpart I of this part and that the station is operated only by persons duly authorized by the licensee.

■ 14. Amend § 5.121 by revising paragraph (a) to read as follows:

§ 5.121 Station record requirements.

(a)(1) For conventional, program, medical testing, compliance testing experimental radio stations, the current original authorization or a clearly legible photocopy for each station shall be retained as a permanent part of the station records but need not be posted. Station records are required to be kept for a period of at least one year after license expiration.

(2) For Spectrum Horizons experimental radio stations, the licensee is solely responsible for retaining the current authorization as a permanent part of the station records but need not be posted. Station records are required

to be kept for a period of at least one year after license expiration.

* * * * *

■ 15. Add subpart I to read as follows:

Subpart I—Spectrum Horizons Experimental Radio Licenses

Sec.

§ 5.701 Applicable rules in this part.

In addition to the rules in this subpart, Spectrum Horizons experimental radio station applicants and licensees shall follow the rules in subparts B and C of this part. In case of any conflict between the rules set forth in this subpart and the rules set forth in subparts B and C of this part, the rules in this subpart shall govern.

§ 5.702 Licensing requirement—necessary showing.

Each application must include a narrative statement describing in detail how its experiment could lead to the development of innovative devices and/or services on frequencies above 95 GHz and describe, as applicable, its plans for marketing such devices. This statement must sufficiently explain the proposed new technology/potential new service and incorporate an interference analysis that explains how the proposed experiment would not cause harmful interference to other services. The statement should include technical details, including the requested frequency band(s), maximum power, emission designators, area(s) of operation, and type(s) of device(s) to be used.

§ 5.703 Responsible party.

(a) Each Spectrum Horizons experimental radio applicant must identify a single point of contact responsible for all experiments conducted under the license and ensuring compliance with all applicable FCC rules.

(b) The responsible individual will serve as the initial point of contact for all matters involving interference resolution and must have the authority to discontinue any and all experiments being conducted under the license, if necessary.

(c) The license application must include the name of the responsible individual and contact information at which the person can be reached at any time of the day; this information will be listed on the license. Licensees are required to keep this information current.

§ 5.704 Marketing of devices under Spectrum Horizons experimental radio licenses.

Unless otherwise stated in the instrument of authorization, devices operating in accordance with a Spectrum Horizons experimental radio license may be marketed subject to the following conditions:

(a) Marketing of devices (as defined in § 2.803 of this chapter) and provision of services for hire is permitted before the radio frequency device has been authorized by the Commission.

(b) Licensees are required to ensure that experimental devices are either rendered inoperable or retrieved by them from trial participants at the conclusion of the trial. Licensees are required to notify experiment participants in advance of the trial that operation of the experimental device is subject to this condition. Each device sold under this program must be labeled as ''Authorized Under An Experimental License and May be Subject to Further Conditions Including Termination of Operation'' and carry a licensee assigned equipment ID number.

(c) The size and scope of operations under a Spectrum Horizons experimental license are subject to limitations as the Commission shall establish on a case-by-case basis.

§ 5.705 Interim report.

Licensee must submit to the Commission an interim progress report 5 years after grant of its license. If a licensee requests non-disclosure of proprietary information, requests shall follow the procedures for submission set forth in § 0.459 of this chapter.

PART 15—RADIO FREQUENCY DEVICES

■ 16. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 17. Amend § 15.33 by revising paragraph (a)(4) and adding paragraph (a)(5) to read as follows:

§ 15.33 Frequency range of radiated measurements.

* * * * *

(a) * * *

(4) If the intentional radiator operates at or above 95 GHz: To the third harmonic of the highest fundamental frequency or to 750 GHz, whichever is lower, unless specified otherwise elsewhere in the rules.

(5) If the intentional radiator contains a digital device, regardless of whether this digital device controls the functions of the intentional radiator or the digital device is used for additional control or function purposes other than to enable the operation of the intentional radiator, the frequency range shall be investigated up to the range specified in paragraphs (a)(1) through (4) of this section or the range applicable to the digital device, as shown in paragraph (b)(1) of this section, whichever is the higher frequency range of investigation.

* * * * *

■ 18. Amend § 15.205 by revising paragraph (d)(4) to read as follows:

§ 15.205 Restricted bands of operation.

* * * * *

(d) * * *

(4) Any equipment operated under the provisions of §§ 15.255 and 15.256 in the frequency band 75–85 GHz, § 15.257 in the 92–95 GHz band or § 15.258.

* * * * *

■ 19. Add § 15.258 to read as follows:

§ 15.258 Operation in the bands 116–123 GHz, 174.8–182 GHz, 185–190 GHz and 244–246 GHz.

(a) Operation on board an aircraft or a satellite is prohibited.

(b) Emission levels within the 116–123 GHz, 174.8–182 GHz, 185–190 GHz and 244–246 GHz bands shall not exceed the following equivalent isotropically radiated power (EIRP) limits as measured during the transmit interval:

(1) The average power of any emission shall not exceed 40 dBm and the peak power of any emission shall not exceed 43 dBm; or

(2) For fixed point-to-point transmitters located outdoors, the average power of any emission shall not exceed 82 dBm and shall be reduced by 2 dB for every dB that the antenna gain is less than 51 dBi. The peak power of any emission shall not exceed 85 dBm and shall be reduced by 2 dB for every dB that the antenna gain is less than 51 dBi. The provisions in this paragraph (b)(2) for reducing transmit power based on antenna gain shall not require that the power levels be reduced below the limits specified in paragraph (b)(1) of this section.

(3) The peak power shall be measured with a detection bandwidth that encompasses the entire occupied bandwidth within the intended band of operation, *e.g.,* 116–123 GHz, 174.8–182 GHz, 185–190 GHz or 244–246 GHz. The average emission levels shall be measured over the actual time period during which transmission occurs.

(4) Transmitters with an emission bandwidth of less than 100 MHz must

limit their peak radiated power to the product of the maximum permissible radiated power (in milliwatts) times their emission bandwidth divided by 100 MHz. For the purposes of this paragraph (b)(4), emission bandwidth is defined as the instantaneous frequency range occupied by a steady state radiated signal with modulation, outside which the radiated power spectral density never exceeds 6 dB below the maximum radiated power spectral density in the band, as measured with a 100 kHz resolution bandwidth spectrum analyzer. The center frequency must be stationary during the measurement interval, even if not stationary during normal operation (*e.g.,* for frequency hopping devices).

(c) Spurious emissions shall be limited as follows:

(1) The power density of any emissions outside the band of operation, *e.g.,* 116–123 GHz, 174.8–182 GHz, 185–190 GHz or 244–246 GHz, shall consist solely of spurious emissions.

(2) Radiated emissions below 40 GHz shall not exceed the general limits in § 15.209.

(3) Between 40 GHz and the highest frequency specified in § 15.33, the level of these emissions shall not exceed 90 pW/cm^2 at a distance of 3 meters.

(4) The levels of the spurious emissions shall not exceed the level of the fundamental emission.

(d) Fundamental emissions must be contained within the frequency bands specified in this section during all conditions of operation. Equipment is presumed to operate over the temperature range −20 to + 50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

(e) Regardless of the power density levels permitted under this section, devices operating under the provisions of this section are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(f) Any transmitter that has received the necessary FCC equipment authorization under the rules of this chapter may be mounted in a group installation for simultaneous operation with one or more other transmitter(s) that have received the necessary FCC equipment authorization, without any additional equipment authorization. However, no transmitter operating under the provisions of this section may be equipped with external phase-locking inputs that permit beam-forming arrays to be realized.

(g) Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

[FR Doc. 2019–10925 Filed 6–3–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 19–23]

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Fourth Report and Order, the Federal Communications Commission (Commission) completes its implementation of the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act) by adopting service quality standards for intermediate providers; and an exception to those standards for intermediate providers that qualify for the covered provider safe harbor in our existing rules. We also set forth procedures to enforce our intermediate provider requirements. Moreover, we sunset the rural call completion data recording and retention requirements adopted in the *First RCC Order* one year after the effective date of the service quality standards we adopt today. Finally, we deny petitions for reconsideration of the *Second RCC Order.*

DATES: Effective July 5, 2019.

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

FOR FURTHER INFORMATION CONTACT: Zach Ross, FCC Wireline Competition Bureau, Competition Policy Division, Room 5–C211, 445 12th Street SW, Washington, DC 20554, at (202) 418–1033 or *Zachary.Ross@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order, in WC Docket No. 13–39, adopted and released March 15, 2019. A full text version of this document may be obtained at the following Internet Address: *https://docs.fcc.gov/public/attachments/FCC-19-23A1.pdf.*

Synopsis

I. Introduction

1. In 2019, all Americans should have confidence that when a phone call is made to them, they will receive it. Yet, that is not always the case for those living in rural or remote areas of the country. Rural call completion problems persist and they can have significant impacts on quality of life, economic opportunity, and public safety in rural communities. Additional work remains to be done to fix this vexing problem. Today, we take up that charge, furthering the Commission's ongoing efforts to ensure that calls are indeed completed to *all* American consumers and continuing our implementation of the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act). Specifically, based on the record before us, we adopt service quality standards for intermediate providers that complement the rules we have already established for covered providers. We also sunset our remaining call data recording and retention rules one year after the service quality standards adopted today become effective.

II. Background

2. Prior to 2018, the Commission relied on data recording, retention, and reporting rules to address rural call completion issues. These rules, adopted in the 2013 *First RCC Order,* 78 FR 76218, were intended to improve the Commission's ability to monitor the delivery of long-distance calls to rural areas and aid enforcement action with respect to providers' call completion practices. Under these rules, ''covered providers''—entities that select the initial long-distance route for a large number of lines—are required to record and retain, for six months, specific information about each call attempt to a rural operating company number (OCN) from subscriber lines for which the providers make the initial long-distance call path choice. In addition, the *First RCC Order* required covered providers to file quarterly reports with the Commission containing aggregated information.

3. In the April 2018 *Second RCC Order,* 83 FR 21723, the Commission reoriented its existing rural call completion rules to better reflect strategies that have worked to reduce rural call completion problems while at the same time reducing the overall burden of the rules on providers. First, the Commission adopted a new rule requiring covered providers to monitor

the performance of the ''intermediate providers'' to which they hand off calls. The Commission held that the monitoring rule entails both prospective monitoring of intermediate provider performance to prevent problems and retrospective investigation of any problems that arise. At the same time, the Commission gave covered providers flexibility in determining the monitoring practices best suited to their individual networks and declined to mandate compliance with specific standards or best practices as part of the monitoring requirement.

4. Second, the Commission eliminated the rural call completion data reporting requirement for covered providers that was established in the *First RCC Order.* It concluded that the reporting rule was burdensome on covered providers while the resulting reports were of limited utility in discovering the source of rural call completion problems and a pathway to their resolution. The Commission further concluded that the covered provider monitoring rule would be more effective than the reporting requirement because it imposed a direct, substantive obligation.

5. On February 26, 2018, the RCC Act was signed into law. It directs the Commission to establish an intermediate provider registry, and stipulates that (1) certain intermediate providers must register with the Commission, and (2) covered providers may only use registered intermediate providers to transmit covered voice communications. In addition, the RCC Act directs the Commission to establish service quality standards for the transmission of covered voice communications by intermediate providers, and requires intermediate providers to comply with such standards.

6. In the April 2018 *Third RCC FNPRM,* 83 FR 21983, the Commission sought comment on how best to implement the RCC Act and craft service quality rules for intermediate providers in a way that would ''ensure the integrity of the transmission of covered voice communications to all customers in the United States'' without imposing unnecessary burdens on providers. After noting that ''proposals that rely on or are consistent with industry best practices'' are often less burdensome than other potential approaches, the *Third RCC FNPRM* proposed ''to require intermediate providers to take reasonable steps to: (1) Prevent 'call looping,' a practice in which the intermediate provider hands off a call for completion to a provider that has previously handed off the call; (2) 'crank back' or release a call back to the originating carrier, rather than simply dropping the call, upon failure to find a route; and (3) not process calls so as to 'terminate and re-originate' them (*e.g.,* fraudulently using ''SIM boxes'' or unlimited VoIP plans to re-originate large amounts of traffic in an attempt to shift the cost of terminating these calls from the originating provider to the wireless or wireline provider).'' These proposed standards were based on industry best practices developed by the Alliance for Telecommunications Industry Solutions (ATIS) and set forth in its Intercarrier Call Completion/Call Termination Handbook (ATIS RCC Handbook).

7. In the *Third RCC FNPRM,* the Commission also sought comment on alternative proposals for intermediate provider service quality standards, including whether ''to pursue 'the more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders.' '' The Commission further sought comment on whether to eliminate or sunset the rural call completion data recording and retention requirements established in 2013.

8. In the August 2018 *Third RCC Order,* 83 FR 47296, the Commission began its implementation of the RCC Act by codifying rules mandating registration of all intermediate providers and requiring that covered providers use only registered intermediate providers. Specifically, the *Third RCC Order* required that intermediate providers submit certain information to the Commission via a publicly available intermediate provider registry. The registration requirement applies to ''any intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another.'' The Commission set the registration deadline at ''30 days after a Public Notice announcing the approval by the Office of Management and Budget of the rules establishing the registry,'' with any subsequent information updates made within 10 business days of a change.

9. The *Third RCC Order* also implemented the RCC Act's prohibition against the use of unregistered intermediate providers by any covered provider in the path of a given call. Covered providers have ''a reasonable period of time, but no more than 45 days in which to adjust their call routing practices to avoid use of an unregistered intermediate provider after gaining knowledge of its deregistration or lack of registration.''

III. Discussion

A. Service Quality Standards for Intermediate Providers

10. As the RCC Act mandates, we adopt service quality standards for intermediate providers. *First,* we impose on intermediate providers a general duty to complete calls. Specifically, we require intermediate providers to take steps reasonably calculated to ensure that any calls they handle are in fact completed. If an intermediate provider knows, or should know, that calls are not being completed to certain areas, the intermediate provider may be in violation of this general duty if it engages in acts or omissions that allow or effectively allow these conditions to persist. *Second,* when routing traffic destined for rural areas, intermediate providers must actively monitor the performance of any directly contracted downstream intermediate provider and, based on the results of such monitoring, take steps to address any identified performance issues with that provider. *Third,* intermediate providers must ensure that any additional intermediate providers to which they hand off calls are registered with the Commission. As was true for our monitoring obligations for covered providers, the service quality standards described in this section will go into effect six months from the date that this Order is released by the Commission, or 30 days after publication of a summary of this Order in the **Federal Register**, whichever is later. This phase-in period is intended to allow intermediate providers sufficient time to conduct any contractual negotiations necessary to come into compliance with our rules, and for the Commission's intermediate provider registry obligations to become effective.

11. The service quality standards we adopt in this Order further the Commission's efforts to ensure that all calls to rural areas are completed and they further Congress's explicit purpose in passing the RCC Act: To ''ensure the integrity of the transmission of covered voice communications to all customers in the United States'' and ''prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.'' By requiring intermediate providers to take steps reasonably calculated to ensure that all calls reach their intended destination, these service quality standards prevent intermediate providers from routing calls in a manner that results in persistent call completion problems. Where intermediate providers know, or should know, of a call completion issue,

they must now act to address it. This rule establishes a minimum, baseline standard that will ''ensure the integrity of the transmission of covered voice communications to all customers in the United States.'' Our rules also recognize and address longstanding issues with call completion to rural areas. The requirement that intermediate providers take affirmative steps to monitor their performance when directing traffic to rural areas—and act to resolve these problems—is designed to ''prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications,'' as Congress has directed.

12. As discussed above, the RCC Act charges the Commission with the duty to promulgate rules to ''ensure the integrity of the transmission of covered voice communications to all customers in the United States.'' To ensure that the intermediate provider service quality requirements are meeting this charge and serving their intended purpose, we direct the Wireline Competition Bureau to seek comment, one year from the effective date of the intermediate provider service quality standards we adopt today, on the effectiveness of those standards in preventing intermediate providers, both those that also operate as covered providers and those that do not, from engaging in behavior that leads to call competition problems and on whether the rural call completion problems that these rules were intended to address have improved or changed.

1. Flexible Standards for Intermediate Providers

13. Based on the record in this proceeding, we decline to mandate compliance with the three ATIS best practices as proposed in the *Third RCC FNPRM,* and instead adopt a set of flexible standards for intermediate providers based on our existing rules for covered providers. This approach is well supported by the record, and by the legislative history of the RCC Act. The Senate Commerce Committee Report accompanying the RCC Act specifies that in adopting service quality standards, the Commission may apply the ''more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders.'' The service quality standards for intermediate providers that we adopt today parallel the standards already applicable to covered providers under the *Second RCC Order* and earlier Commission orders and rulings, ensuring that our rules will effectively address rural call completion issues while also avoiding unnecessary compliance burdens on intermediate providers—particularly those that serve dual roles as both covered and intermediate providers.

14. We agree with commenters who argue that mandating compliance with the three ATIS best practices may be impractical or unduly burdensome for some intermediate providers, particularly those relying on older network technologies to provide service. Due to the differences among providers and their underlying networks, adoption of the ATIS best practices as the service quality standards applicable to all intermediate providers might impose unnecessary costs on some intermediate providers. As Verizon observes, ''[s]ome providers may find certain [ATIS] best practices useful, while others may prefer different best practices based on their particular networks, technologies, and call patterns. Requiring intermediate providers to implement the best practices outlined in the *Third RCC FNPRM* would reduce the flexibility providers need to manage their networks.'' In addition, because the ATIS best practices are meant to be dynamic and responsive to technological and industry developments, imposing those as mandatory rules could hinder the evolution of these and similar industry best practices. As the Commission found in the *Second RCC Order* with respect to its rural call completion rules for covered providers, requiring compliance with ATIS best practices ''could have a chilling effect on future industry cooperation to develop solutions to industry problems.'' As USTelecom observes, these same concerns are relevant to our efforts to craft service quality standards for intermediate providers.

15. We also agree with commenters who argue that we should adopt a flexible regulatory approach to intermediate provider service quality standards, and that we should seek to align our service quality standards for intermediate providers with those call completion rules that already apply to covered providers. As ATIS notes, ''many providers are both 'covered providers' and 'intermediate providers,' changing roles on a call to call basis.'' USTelecom further submits that ''these entities generally utilize the same network facilities, the same business processes, and the same vendors to process calls'' regardless of whether they operate as a covered provider or intermediate provider, and that each category of provider has the same fundamental obligation to ensure that calls traversing their networks are completed. We have found that the monitoring rule applicable to covered providers ''encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action where needed to address persistent problems.'' Moreover, we agree with commenters that application of a similar approach to intermediate providers should provide similar benefits and avoid unnecessary costs. For these reasons, the rules we adopt today for intermediate providers closely parallel those that currently apply to covered providers.

16. We therefore reject the arguments from several commenters urging adoption of the Commission's proposal to require compliance with the three ATIS best practices listed in the *Third RCC FNPRM* rather than allowing for more flexibility. These commenters generally argue that the best practices provide an appropriate regulatory framework because they have been designed by a broad cross section of industry stakeholders to effectively address call completion issues and are widely known and utilized in the industry. NTCA, for example, argues that ''[i]ndustry defined best practices such as those identified by ATIS establish an appropriate base-line standard'' by which to evaluate intermediate providers' call completion efforts. Although we agree with these observations as a general matter, after carefully considering the record, we conclude that any benefits associated with the adoption of the ATIS best practices framework proposed in the *Third RCC FNPRM* are likely outweighed by the compliance burdens associated with this approach. NTCA argues that the ATIS best practices are ''the most proven measure thus far to accomplish the goal of minimizing . . . rural call completion problems.'' However, while the ATIS best practices may be a useful guide to addressing call completion issues, they may not be appropriate for all networks or providers, and mandating compliance with the proposed best practices may create unnecessary compliance burdens for providers that serve as both covered providers and intermediate providers.

17. In addition to the shortcomings discussed above, the adoption of the proposed ATIS best practices framework could raise other practical issues that might limit its utility. For example, West Telecom, while supporting the use of the ATIS best practices as a general regulatory framework in lieu of ''Commission micro-management,''

notes that ''the ATIS RCC Handbook may not necessarily reflect [the] best approaches to resolving certain situations'' and that ''the Commission should continue to decline to mandate strict compliance with the ATIS RCC Handbook or other industry standards in all situations.'' Similarly, ANI generally supports the Commission's proposed framework based on the ATIS best practices but also ''urges the Commission not to impose more complex service quality standards, which may not be appropriate for all intermediate providers and could unnecessarily restrict carriers' flexibility to determine the standards best suited to their individual networks.'' Additionally, ANI and West Telecom both point out potential issues related to our adoption of a ''crank back'' requirement. Furthermore, at least one rural intermediate provider has argued that its legacy infrastructure precludes compliance with the proposed ATIS best practices framework as a technical matter.

18. Notwithstanding these issues, we agree with commenters that the ATIS best practices provide an effective roadmap for mitigating call completion issues, and we reaffirm our finding in the *Second RCC Order* that the Commission should encourage providers to adopt these practices, while being mindful that the ATIS best practices may not be appropriate for all providers. For this reason, as is true of our monitoring rule for covered providers, we will treat compliance with the ATIS best practices, as specified in the 2015 ATIS RCC Handbook, as a safe harbor demonstrating compliance with our service quality standards for intermediate providers, including the general duty to deliver covered voice communications and the intermediate provider monitoring requirements discussed below. Consistent with our approach to covered providers in the *Second RCC Order,* we will also take the ATIS RCC Handbook best practices into account when evaluating whether an intermediate provider has established an effective monitoring regime for evaluating its performance in delivering calls to rural areas. As discussed above, however, we recognize that the ATIS best practices may not be appropriate for all providers and all network configurations, and our evaluation of an intermediate provider's monitoring regime will necessarily reflect these considerations. We find, as we did in the *Second RCC Order,* that this approach will ''encourage adherence to the best practices while giving . . . providers flexibility to tailor their practices to their particular networks and business arrangements.''

2. Intermediate Providers Must Take Steps Reasonably Calculated To Ensure That All Covered Voice Communications Traversing Their Networks Are Delivered to Their Destination

19. Building on the regulatory approach for ensuring rural call completion that we have previously applied to covered providers, in this Order we require intermediate providers to take steps reasonably calculated to ensure that all covered voice communications that traverse their networks are delivered to their destinations. An intermediate provider may violate this general duty to complete calls if it knows, or should know, that calls are not being completed to certain areas, and it engages in acts or omissions that allow or effectively allow these conditions to persist.

20. As is true for covered providers under the *2012 Declaratory Ruling* and *Second RCC Order,* under this rule intermediate providers must promptly resolve any anomalies or problems that arise preventing call completion, and take action to ensure they do not recur. If an intermediate provider determines that responsibility for a call completion problem lies with a party other than the provider itself or any of its downstream providers, the provider must use commercially reasonable efforts to alert that party to the anomaly or problem. Willful ignorance will not excuse a failure by an intermediate provider to investigate evidence of poor performance. Evidence of poor performance includes, among other indicators, ''persistent low answer or completion rates; unexplained anomalies in performance reflected in the metrics used by the [intermediate] provider; repeated complaints to the Commission, state regulatory agencies, or [intermediate] providers by customers, rural incumbent LECs and their customers, competitive LECs, and others.''

21. We note that nothing in this rule should be construed to dictate how intermediate providers must route their traffic, nor does the general duty to deliver covered voice communications impose strict liability upon intermediate providers who fail to complete calls. As we specified in the context of our monitoring rule for covered providers, ''[w]e do not impose strict liability on . . . providers for a call completion failure; rather, we may impose a penalty where a . . . provider fails to take actions to prevent reasonably foreseeable problems or, if it knows or should know that a problem has arisen, where it fails to investigate or take appropriate remedial action.'' Similarly, the rules we adopt today for intermediate providers focus on addressing persistent call completion issues; thus, strict liability under our service quality rules for isolated call failures is not contemplated. Rather, we require all intermediate providers to take steps reasonably calculated to ensure that covered voice communications reach their destination, utilizing the tools available to each provider, recognizing that these tools may vary depending on the size of the provider, their network configuration, and other variables.

22. As we found in the *Third RCC Order,* the provisions of the RCC Act are not limited to rural areas; therefore, we apply the general duty discussed above to all covered voice communications, regardless of their destination. This rule directly addresses Congress's instruction to adopt rules to ''ensure the integrity of the transmission of covered voice communications to *all* customers in the United States[.]'' Our approach also aligns the obligations of intermediate providers with those applicable to covered providers pursuant to the *2012 Declaratory Ruling* and the *Second RCC Order,* which require a covered provider ''that knows or should know that it is providing degraded service to certain areas'' to take action to correct the problem and ''ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately.''

3. Intermediate Providers Must Monitor the Performance of any Directly Contracted Intermediate Providers When Routing Traffic to Rural Areas

23. In addition to the general duty to deliver all covered voice communications, we adopt the *Third RCC FNPRM* proposal to require that intermediate providers establish processes to monitor their rural call completion performance. Therefore, when transmitting covered voice communications to rural areas, intermediate providers must: (a) Monitor the performance of each intermediate provider with which it contracts; and (b) based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing that provider for sustained poor performance.

24. These requirements parallel the monitoring obligations the Commission

adopted for covered providers in the *Second RCC Order,* and are broadly supported by the record in this proceeding. We agree with arguments advanced by ITTA and several other commenters that ''the Commission should model this self-monitoring rule on the monitoring rule for covered providers.''

25. As was true of our covered provider monitoring requirements, the rural call completion performance monitoring obligation ''entails both prospective evaluation to prevent problems and retrospective investigation of any problems that arise.'' Prospective monitoring ''includes regular observation of intermediate provider performance and call routing decision-making; periodic evaluation to determine whether to make changes to improve rural call completion performance; and actions to promote improved call completion performance where warranted.'' Retrospective monitoring requires intermediate providers to take steps reasonably calculated to correct any identified performance problems. Where intermediate providers detect persistent problems routing covered voice traffic to rural areas, we require intermediate providers to develop a solution that is reasonably calculated to be effective, and specifically require intermediate providers to remove a contracted intermediate provider from a route after sustained inadequate performance, except in situations where an intermediate provider can demonstrate that no alternative routes exist. Intermediate providers that do not effectively correct problems with delivery of covered voice communications to rural areas may be subject to enforcement action for violations of our service quality standards, including the general duty to deliver covered voice traffic to its destination and the monitoring requirement. Together, these rules satisfy Congress's direction to the Commission to ''ensure the integrity of the transmission of covered voice communications to all customers in the United States'' and ''prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.''

4. Intermediate Providers Must Ensure That Any Intermediate Providers to Which They Hand Off Calls Are Registered

26. We also require intermediate providers to ensure that any additional intermediate providers to which they hand off calls are registered with the Commission pursuant to § 64.2115 of the Commission's rules. As is true of the general duty to complete calls and the rural call completion performance monitoring obligations discussed above, we adopt this rule pursuant to the authority granted to the Commission by Congress in the RCC Act, which directs us to develop service quality standards for intermediate providers. The RCC Act requires that all intermediate providers register with the Commission and prohibits covered providers from using any unregistered intermediate providers. We find that extending this prohibition to intermediate providers as well will further the aims of the RCC Act by making all participants in the call path responsible for ensuring the registration of any subsequent intermediate providers. We also note that the RCC Act expressly requires the rules we promulgate pursuant to the statute to ensure the integrity of the transmission of covered voice communications ''to all customers in the United States'' and to ''prevent unjust or unreasonable discrimination among areas of the United States'' in the delivery of such communications. Accordingly, we clarify that the registry requirements in § 64.2115 as well as the intermediate service quality standards we adopt today do not apply to non-U.S. intermediate providers on calls terminating outside of the United States. This requirement aligns with the prohibition on covered provider use of unregistered intermediate providers pursuant to the RCC Act and § 64.2117 of the Commission's rules, and will promote compliance with the registry provisions of the RCC Act by making intermediate providers jointly responsible for ensuring the registration status of directly contracted downstream intermediate providers in their call path.

27. The RCC Act requires that all intermediate providers must maintain a registration with the Commission in order to transmit covered voice communications, and the *Third RCC Order* requires covered providers to use contractual restrictions designed to ensure the registration status of any downstream intermediate providers in the call path. And, pursuant to the RCC Act and the *Third RCC Order,* information concerning the registration status of intermediate providers will be readily available on the Commission's website. For these reasons, we expect the burdens associated with this requirement to be minimal.

28. In order to further reduce the compliance burdens associated with this rule, we decline to require intermediate providers to submit a certification to the Commission stating that they do not transmit covered voice communications to other unregistered intermediate providers. As we noted with respect to the monitoring rule for covered providers, ''[w]e expect all entities subject to our rules to comply at all times,'' and we decline to impose a certification requirement absent a clear public interest benefit. Although some parties believe a certification, for example on an annual basis, is useful to ensure intermediate providers are taking reasonable steps to comply with Commission requirements, we find consistent with other commenters that the RCC Act and Commission rules provide sufficient methods to monitor and enforce non-compliance. For example, as discussed below, the Commission has authority to take enforcement actions against covered and intermediate providers that are not registered such as forfeitures and deregistration. We therefore decline to require intermediate providers to certify that they do not transmit covered voice communications to other intermediate providers that are not registered with the Commission. Nor do we require intermediate providers to take responsibility for ensuring the registration status of downstream intermediate providers with which they do not share a direct relationship, as we do for covered providers. Compared with covered providers, which must exceed a minimum size threshold and determine the initial long-distance path of a call, intermediate providers may have less ability to modify call routing paths. And, because each intermediate provider in the path of a given call is responsible for determining the registration of any other intermediate provider to which it hands off calls, we find that such a requirement would be duplicative and, thus, unnecessary.

5. Other Issues

29. *Additional Rules to Prevent Ring Signaling Manipulation.* We decline to adopt any additional rules to prevent intermediate providers from manipulating signaling information for calls destined for rural areas. As supported in the record, our existing rules already require intermediate providers to pass and return unaltered signaling information, and we conclude that additional rules are unnecessary. Moreover, a covered provider is also responsible when a downstream intermediate provider unlawfully generates ring signaling on a call. Although NTCA supports prohibiting intermediate providers from manipulating signaling information, it does not recommend additional rules. Because these waiver petitions involve

the technical signaling capabilities of the various carriers, we conclude that these petitions are outside the scope of this rulemaking, and therefore, decline to address them as part of this Order. We note that § 64.1601(a)(2) of our rules makes clear that intermediate carriers are already mandated to faithfully relay signaling. As such, we decline to impose additional regulation.

30. *Limitation of number of intermediate providers.* We also decline to require intermediate providers to limit the number of subsequent intermediate providers in the call chain. Although Inteliquent supports a limitation and requests the Commission to limit the number of intermediate providers in the call path to no more than three, the majority of commenters reject this proposal. We agree with West Telecom that the number of intermediate providers is not ''an appropriate proxy to identify specific intermediate providers or routing practices that interfere with RCC.'' We do not agree with Inteliquent that, in all cases, limiting the number of intermediate providers will encourage efficient network architecture and thus improve call completion rates. The Commission remains concerned that specific limitations on the number of intermediate providers ''conflate[] the number of 'hops' with good hops . . . [by assuming] that a small number of badly performing intermediate providers are better than multiple well-performing intermediate providers.'' Instead, we believe that providers should have flexibility to meet the requirements the Commission has in place. Consistent with our treatment of covered providers, although we decline to *mandate* a specific limit on the number of intermediate providers in the call chain, we believe the service quality standards adopted herein will encourage intermediate providers to limit other providers in the chain.

31. *Numeric performance thresholds.* In an effort to consider alternative service quality standards, we sought comment on whether the Commission should require intermediate providers to meet or exceed one or more numeric rural call completion performance targets. Consistent with the majority of comments, we decline to set specific numeric thresholds, but rather allow intermediate providers flexibility to self-monitor rural call completion performance. We therefore decline to adopt Inteliquent's proposal for performance targets on a weekly and LATA/OCN basis. We agree, as described by Georgetown University, that while evaluation of these and other metrics over time is a valuable tool to ensure call completion, specific performance targets are not useful. Nonetheless, we expect intermediate providers to monitor their networks and downstream providers with sufficient specificity to adequately evaluate their performance. We recognize that intermediate providers handle calls on a variety of networks and agree with most commenters that a reasonable self-monitoring process—consistent with monitoring processes for covered providers and contemplated by the Senate Commerce Committee Report—will sufficiently monitor downstream providers and allow correction.

32. *Modification of Rules Adopted in the Second RCC Order.* We also decline to make any modifications to rules adopted in the *Second RCC Order.* As discussed in more detail below in rejecting USTelecom's Petition for Reconsideration, we reaffirm the Commission's findings in the *Second RCC Order* that the monitoring rule is necessary to address ongoing rural call completion issues, and is supported by the record in this proceeding and the regulatory regime established by Congress in the RCC Act. We disagree with ITTA that the Commission should ''abandon the covered provider monitoring requirements altogether, or at least curtail them substantially.'' We further disagree with NCTA that covered providers should only be responsible for conduct directly within their control. Rather, we again reject any ''all-or-nothing'' approach to the monitoring rule and reaffirm that our balanced approach provides for responsibility for rural call completion without imposing an unduly rigid or burdensome mandate.

B. Exception To Service Quality Standards for Safe Harbor Covered Providers

33. The RCC Act provides that the service quality standards established by the Commission pursuant to the RCC Act ''shall not apply to a covered provider'' that has certified as a safe harbor provider under § 64.2107(a) on or before February 26, 2019 (which is one year after the enactment of the RCC Act) and that continues to maintain eligibility for the safe harbor. To implement this provision of the RCC Act, we adopt an exception to the service quality standards described above for intermediate providers that qualify for our covered provider safe harbor established in new § 64.2109 of the Commission's rules, similar to the Commission's existing § 64.2107 safe harbor from the rural call completion recording and retention requirements.

34. As the Commission proposed in the *Third RCC FNPRM,* we maintain the three safe harbor requirements as currently provided in our existing rules. Therefore, in order to qualify for the exemption from the intermediate provider service quality standards established by the RCC Act, covered providers must satisfy three requirements: (1) The covered provider must restrict by contract any intermediate provider to which a call is directed from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem; (2) any nondisclosure agreement with an intermediate provider must permit the covered provider to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent LEC(s) whose incoming long-distance calls are affected by the intermediate provider's performance; and (3) the covered provider must have a process in place to monitor the performance of its intermediate providers.

35. We note that the service quality standards we adopt today under the RCC Act apply only to intermediate providers; however, the exemption established by the RCC Act is, like the safe harbor in our existing rules, limited to covered providers. We note that we did not receive comments about this disparity. We therefore clarify that covered providers qualifying for our safe harbor on or before February 26, 2019 will be exempt from our service quality standards when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission.

C. Enforcement of Intermediate Provider Requirements

36. In the *Third RCC Order,* the Commission required intermediate providers that offer to transmit covered voice communications to register with the Commission, pursuant to subsection (a)(1) of the RCC Act. The Commission determined that because the RCC Act intends the registry to function as a qualification for providers to enter the intermediate provider market, the requirement to register (as well as to maintain registration in good standing) is tantamount to a license. The Commission concluded that it may exercise its forfeiture authority against intermediate providers that fail to register without first issuing a citation.

37. Under subsection (a)(2) of the RCC Act, once the service quality standards we adopt here take effect, registered intermediate providers, and providers

that subsequently seek registration with the Commission, must comply with these standards. Accordingly, as supported by a number of commenters, we conclude that we may deregister intermediate providers from the registry as an enforcement option. As in the case of intermediate providers that fail to register with the Commission, we also may exercise our forfeiture authority against intermediate providers that fail to comply with the service quality standards, and, as explained in the *Third RCC Order,* we may do so without first issuing a citation. In such cases, as in all forfeiture matters, the Commission will consider the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. 47 U.S.C. 503(b)(2)(E). Our choice of enforcement remedy will depend upon the totality of circumstances, and we may impose penalties for both single infractions and patterns of non-compliance or misconduct. Requiring repeated violations before allowing enforcement action, as some commenters propose, could result in, if not indirectly encourage, systemic call completion issues—an outcome that would frustrate the underlying purpose of the RCC Act.

38. When the Commission seeks to remove an intermediate provider from the registry, the procedures specified in Section 558 of the Administrative Procedure Act apply. Except in cases of willfulness or where public health, interest, or safety requires otherwise, deregistration may occur after the intermediate provider has been given written notice of the facts or conduct at issue and an opportunity to demonstrate or achieve compliance with the service quality standards. Such notice will take the form of a publicly issued order to show cause. Intermediate providers that do not present a response with written evidence of their compliance with the requirements identified in the notice for this reason, we find it unnecessary to establish a separate requirement that intermediate providers ''maintain records of how they are complying'' with the service quality standards, as NTCA suggests or a detailed plan on how they intend to achieve compliance within thirty days will be removed from the registry. A hearing will not be required unless the intermediate provider's response presents a substantial and material question of fact. In any case where a hearing proceeding is conducted, the hearing shall be based on written evidence only. Deregistration orders will be subject to judicial review under Section 402(a) of the Communications Act. We note that, if a proceeding results in deregistration, the order to show cause will afford affected covered providers ample notice to explore alternative arrangements, in order to migrate their traffic to other, compliant, intermediate providers if necessary.

39. Moreover, a covered provider that becomes aware that an intermediate provider it uses is violating the service quality standards may also be subject to enforcement action, even if the intermediate provider is properly registered. Because covered providers must know or be capable of knowing the identity of all intermediate providers in the path of a given call, monitor the performance of their intermediate providers in completing calls to rural destinations, and take steps to correct performance problems, when a provider learns that its intermediate provider is violating service quality standards, it is responsible for removing that provider from all affected call paths until the provider demonstrates compliance. A failure to do so may result in enforcement action.

D. One-Year Sunset of Recording and Retention Rules

40. We sunset the rural call completion data recording and retention requirements established in the *First RCC Order* one year after the effective date of the service quality standards adopted here today. Based upon the record developed since those requirements' adoption in 2013, and the analysis the Wireline Competition Bureau (Bureau) developed in the 2017 RCC Data Report, we find that the few, if any, benefits the call data offers do not outweigh the burden presented by having covered providers collect and retain data that is not useful in monitoring or remedying call completion issues.

41. The call data recording, retention, and reporting requirements were intended to improve the Commission's ability to monitor rural call completion, and to aid enforcement action when necessary. These requirements, instituted by the 2013 *First RCC Order,* apply to covered providers for calls signaled as Answered, Busy, Ring No Answer, and Unassigned. The Commission declined to then adopt a specific sunset date for data recording, retention, and reporting, but directed the Bureau to produce a report, analyzing covered provider call data ''submitted during the first two years of the data collection's effectiveness'' and committed to complete a proceeding reevaluating ''whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective.''

42. The Bureau recommended in its resulting 2017 RCC Data Report that the Commission consider eliminating the recording, retention, and reporting rules. The Bureau reached this recommendation after finding significant data reliability issues—including inconsistent covered provider categorization methodologies for the four call types, and failure by some covered providers to exclude autodialer, wholesale, and intermediate provider traffic because of technical inabilities to do so. The RCC Data Report noted that even if the Commission were to modify the recording, retention, and reporting requirements, ''it is not clear that that the benefits of such modifications would outweigh the costs.'' In the *Second RCC Order,* the Commission instituted the Bureau's recommendation in part by eliminating the reporting, but keeping the recording and retention requirements. Having received significant comments in favor of eliminating all three requirements pursuant to the *Second RCC FNPRM,* 82 FR 34911, the *Third RCC FNPRM* sought further comment on the elimination or sunsetting of the recording and retention rules upon implementation of the RCC Act. The Commission also asked whether it should instead ''sunset the rules at a different point in time'' or ''instead retain the recording and retention rules without any sunset.''

43. We sunset the recording and retention rules as the burden of continuing to mandate that covered providers collect and retain data, especially as prescribed by those rules, outweighs any benefit or usefulness of the data. We agree with USTelecom that it makes ''little sense for the Commission to continue to require providers to record and retain data that neither the Commission nor the carriers use, or find useful for analysis of, rural call completion issues.'' For the same reason, we disagree with NTCA's argument that ''the Commission should retain the record keeping requirement for covered providers until such time as there is an affirmative determination that the rules are effective and records are no longer necessary.'' Because the data as prescribed by the *First RCC Order* is not useful to covered providers in alleviating rural call completion issues, our recording and retention rules have placed covered providers in the position of maintaining one pre-packaged set of data for rural call completion rule compliance only and possibly retaining another data set *actually* used by covered providers in

operating their networks and remedying call completion issues via the covered provider monitoring rule. We expect covered providers to dedicate all available resources to prevent and remedy call completion issues; and, therefore, it is unnecessary for us to require covered providers to produce data unused in meeting these purposes.

44. We disagree with NTCA that maintaining the recording and retention rules will inform us of the efficiency of the monitoring requirements, intermediate provider service quality standards, and intermediate provider registry. Because the monitoring rule permits covered providers ''*flexibility* in determining and conducting prospective monitoring that is appropriate for their respective networks and mixes of traffic,'' mandating specific data collection metrics would stifle this flexibility, and would in practice, prescribe monitoring practices.

45. We also disagree with NTCA's argument that eliminating the recording and retention rules ''may lead to an increase in the number of intermediate providers being used in the call path for providers who now have a good record of completing calls.'' We find it unlikely that covered providers with a good track record of completing calls would suddenly assume bad call completion practices, and risk violating the Commission's call completion rules, as a result of the removal of the recording and retention requirements. Nor does NTCA point to any evidence suggesting such an outcome. For these same reasons, we disagree with NTCA's assertion that removal of the recording and retention rules will reduce the appeal of the safe harbor for covered providers and thereby lead to diminished rural call completion performance by safe harbor covered providers. Moreover, as we stated above and in the *Second RCC Order,* we believe that our intermediate provider service quality standards, the intermediate provider registry requirement, and the covered provider monitoring requirement will limit the number of providers in call paths.

46. The *Third RCC FNPRM* did not propose a sunset timeline for the recording and retention requirements, but suggested a period ''such as three years'' from the *Second RCC Order.* Commenters in this proceeding have advocated that the recording and retention rules be eliminated upon effectiveness of our RCC Act implementing regulations, or upon adoption of the service quality standards. Despite the data quality issues discussed above, we find that immediate removal of the recording and retention rules could impact our ability to address rural call completion issues pending full implementation of the RCC Act requirements. We therefore find that a one-year sunset of the recording and retention rules will serve as a sufficient bridge between the Commission's previous recording and retention rules and the RCC Act regulations.

47. This sunset period will allow covered and intermediate providers to come into full compliance with the rural call completion rules adopted pursuant to the RCC Act before the recording and retention requirements are removed. The *Third RCC Order* mandates that intermediate providers register ''within 30 days after publication of a Public Notice announcing the approval by the Office of Management and Budget of the final rules establishing the registry,'' and covered providers have 90 days thereafter to only use registered intermediate providers. And as discussed above, we grant intermediate providers a period of six months from the date that this Order is released by the Commission, or 30 days after publication of a summary of this Order in the **Federal Register**, whichever is later, to comply with our service quality standards. We therefore believe a one-year sunset period for the remaining recording and retention rules will provide a sufficient overlap between the new call completion rules and the Commission's previous data collection regime.

48. The recording and retention safe harbor will also thus remain concurrently, without change, until the recording and retention requirements expire one year after the service quality standards are in effect. Accordingly, we sunset the remaining call data recording and retention requirements established in the *First RCC Order* one year after the effective date of the intermediate provider service quality standards. We also extend the application of the safe harbor to our newly adopted service quality standards for intermediate providers.

E. Petitions for Reconsideration of Second RCC Order

1. NTCA Petition for Reconsideration

49. On June 11, 2018, NTCA filed a Petition for Reconsideration (Petition) of a portion of the *Second RCC Order,* requesting ''that the Commission reevaluate and reconsider its decision to not require covered providers to file their documented rural call completion monitoring procedures with the Commission.'' For the reasons listed below, we deny NTCA's Petition.

a. Background

50. In the *Second RCC Order,* the Commission instituted a covered provider monitoring requirement. This monitoring requirement, which became effective October 17, 2018, requires covered providers to prospectively and retrospectively monitor their contracted intermediate providers, and to document those monitoring processes, ''to ensure consistent prospective monitoring and facilitate Commission oversight.'' The Commission declined to require covered providers to file or publish this monitoring process documentation, due to concerns about revealing ''important technical, personnel, and commercial details about the covered provider's network and business operations,'' and a corresponding lack of any ''countervailing benefit to warrant imposing'' such a burden. In addition to this Petition, NTCA previously submitted two near-identical *ex parte* presentations in April 2018. The two *ex parte*s, identical in facts and argument to its Petition, requested ''that the Commission require covered providers to file with the Commission their documented monitoring procedures,'' as filing of procedures imposes ''no meaningful burden on covered providers, while offering greater transparency and certainty.''

b. Discussion

51. Our rules allow interested persons to file petitions for reconsideration of final actions in rulemaking proceedings, and provides that petitions for reconsideration relying on ''facts or arguments which have not previously been presented to the Commission will be granted'' only under certain circumstances. Where the petition presents no new facts or arguments, the Commission has full discretion to grant such petitions in ''whole or in part or may deny or dismiss the petition.''

52. Although we agree that NTCA is an interested party to a final action, the Commission has already considered and rejected NTCA's arguments, and NTCA presents no new facts or arguments to explain why the Commission should reconsider its decision on covered provider monitoring documentation. As Sprint points out, NTCA's Petition is a near verbatim restatement of the facts and arguments NTCA submitted in its two April 2018 *ex parte* filings that transparency and certainty compel the Commission to mandate that covered providers file their monitoring processes with the Commission. Accordingly, because NTCA does not submit new facts or arguments, we have full

discretion to grant or deny its Petition in whole or in part.

53. Under such discretionary authority, we deny the Petition. Beyond its editorialization of our decisions, NTCA does not present new arguments or facts warranting a discretionary change in the Commission's decision to not require covered providers to file or publish their monitoring processes. NTCA specifically challenges the Commission's ''conclusion'' of expecting covered providers to document their monitoring procedures without requiring covered providers to file those procedures with the Commission ''or otherwise make them publicly available.'' The Commission indeed specifically and fully addressed NTCA's identical argument in the *Second RCC Order.* We continue to reiterate that there is no ''countervailing benefit sufficient to warrant imposing'' the burden of filing monitoring processes, as the Commission may obtain most information—including monitoring process information—pursuant to its investigatory authority into covered provider practices under the Communications Act. Accordingly, we deny NTCA's Petition for Reconsideration in whole, pursuant to § 1.429(i) of our rules.

2. USTelecom Petition for Reconsideration

54. We also dismiss and deny a petition for reconsideration filed by USTelecom seeking review of rules adopted in the *Second RCC Order.* Specifically, USTelecom requests reconsideration of certain aspects of the Commission's monitoring rules for covered providers. As explained below, we dismiss the Petition as it relies on arguments already considered and rejected by the Commission in the *Second RCC Order,* and we reaffirm our findings that the monitoring rule appropriately balances the burdens our rules impose on covered providers with the need to address ongoing rural call completion issues. Moreover, the Commission's adoption of the monitoring rule is supported by the record in this proceeding and consistent with the provisions of the RCC Act.

a. Background

55. On June 11, 2018, USTelecom filed a petition for reconsideration of certain aspects of the covered provider monitoring rule adopted in the *Second RCC Order.* The *Second RCC Order* adopted a requirement, codified at 47 CFR 64.2111, that covered providers monitor the performance of the intermediate providers to which they hand off calls, and, based on the results of such monitoring, take steps reasonably calculated to correct any identified performance problems with downstream intermediate providers. The *Second RCC Order* indicated that, under the monitoring rule, ''a covered provider is accountable for monitoring the performance of any intermediate provider with which it contracts, including that intermediate provider's decision as to whether calls may be handed off to additional downstream intermediate providers . . . and whether it has taken sufficient steps to ensure that calls will be completed post-handoff.'' In order to comply with their obligations under the monitoring rule, the *Second RCC Order* afforded covered providers the flexibility to manage the call path through ''(i) direct monitoring of all intermediate providers or (ii) a combination of direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion through the responsible use of any further intermediate providers.''

56. USTelecom seeks reconsideration of the requirement that covered providers exercise responsibility for the call completion performance of downstream intermediate providers with which there is no direct contractual relationship, arguing that this requirement ''poses severe practical issues'' and ''creates an unreasonable compliance trap for originating providers.'' NCTA—The internet & Television Association (NCTA) and ITTA—The Voice of America's Broadband Providers (ITTA) filed comments in support of USTelecom's petition for reconsideration, while NTCA—The Rural Broadband Association filed comments in opposition.

b. Discussion

57. As an initial matter, we note that the Petition and supporting commenters rely on several substantive arguments previously submitted to the Commission prior to the adoption of the monitoring rule. Under § 1.429 of the Commission rules, petitions which ''[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding'' ''plainly do not warrant consideration by the Commission'' and may be dismissed or denied.

58. As one of their primary arguments for reconsideration, USTelecom, NCTA, and ITTA claim that compliance with the monitoring rule necessitates modification of existing vendor agreements, which, they allege, ''poses severe practical issues.'' However, as NTCA observes, ''this same argument was raised in the notice-and-comment phase of the rulemaking and rightly and squarely rejected by the Commission.'' In the *Second RCC Order,* we considered, and rejected, the argument that covered providers could not, or should not, bear any responsibility for the performance of non-contracted intermediate carriers. The Commission also recognized that ''covered providers will need some time to evaluate and renegotiate contracts with intermediate providers in order to comply with the monitoring requirement.'' For this reason, we established a six-month transition period for covered providers to come into compliance with our rules. We therefore dismiss these arguments as having previously been considered by the Commission. Similarly, we dismiss related arguments advanced by USTelecom, ITTA, and NCTA concerning whether ''direct'' monitoring of intermediate providers with which there is no contractual relationship is feasible. These arguments were likewise considered, and rejected, by the Commission in the *Second RCC Order.*

59. Although USTelecom claims that ''many originating providers will be unable to modify their vendor agreements'' because ''revisions [to contracts] can generally be made only during the vendor contract renewal terms,'' it offers no evidence to support these assertions, nor do any other commenters supporting the Petition. On the contrary, as NTCA notes, the *Second RCC Order* offered covered providers ''ample time to establish the contractual provisions necessary'' to comply with the monitoring rule, and, in any event, any covered provider unable to comply after this time has the option to request a waiver of our rules provided it can demonstrate good cause warranting grant of such relief.

60. We also disagree with ITTA's assertion that the monitoring rule ''[c]ontravene[s] the RCC Act'' because it ''fl[ies] in the face of the statutory balancing crafted by Congress.'' ITTA has previously advanced similar arguments in this proceeding, which we rejected in the *Second RCC Order.* As we have explained, ''passage of the RCC Act does not obviate the need for covered provider regulation,'' and our monitoring rule ''complements, but exists independently of, the registry and service quality obligations contained in the RCC Act.''

61. ITTA argues that the RCC Act's adoption of service quality and registry standards for intermediate providers suggests that Congress intended to focus responsibility for call completion issues

predominantly or entirely on intermediate providers. We disagree. ITTA's arguments suggest a fundamental misreading of the RCC Act and its relationship to existing Commission rules and precedent concerning rural call completion issues. Had Congress intended to shield covered providers from rural call completion rules, it could easily have done so in the RCC Act. Contrary to ITTA's suggestion, however, the RCC Act recognized and approved of the Commission's efforts to hold covered providers accountable for rural call completion issues, and granted the Commission additional authority to support a complementary regulatory regime for intermediate providers. Specifically, in passing the RCC Act, Congress repeatedly referenced the Commission's regulation of covered providers, both in the text of the Act and the accompanying legislative history, noting that the Commission was free to model its service quality standards for intermediate providers on the ''general . . . duties to complete calls'' that apply to covered providers. These duties, implicitly endorsed by Congress, include those described in the *2012 Declaratory Ruling,* which clarified that ''a carrier remains responsible for the provision of service to its customers even when it contracts with another provider to carry the call to its destination.'' As we explained in the *Second RCC Order,* these same obligations form the basis of the monitoring rule for covered providers.

62. ITTA also argues that the Commission's finding in the *Second RCC Order* that covered providers are able to use pass-through contractual restrictions to ensure call completion is ''[u]nsupported by the [r]ecord.'' We disagree. Indeed, ITTA's own comments point to relevant record support for this finding, including, as described by ITTA: ''[A] reference to third-party vendors performing monitoring; a suggested best practice whereby contractual agreements can be used to ensure that intermediate providers meet performance standards and hold other intermediate providers accountable for performance; and one commenter stating that its direct contracts with intermediate providers stipulate that the intermediate provider may use no more than one additional intermediate provider before the call is terminated.'' In its comments, ITTA summarily dismisses this record support based on the assertion that it does not constitute ''actual evidence.'' ITTA provides no analysis or elaboration whatsoever to support this claim; however, insofar as ITTA makes an argument that the monitoring rule lacks record support, we disagree. We also disagree with ITTA's contention that the *Second RCC Order* is ''rife with potential confusion.'' ITTA's argument appears to rest on its assertion that the *Second RCC Order* ''cobbl[es] together three things that it 'encourage[s]' into a *de facto* requirement.'' However, as the *Second RCC Order* makes clear, none of the specific practices referenced by ITTA—including ''adherence to the ATIS RCC Handbook,'' ''limit[ing] the number of intermediate providers in the call chain,'' and incorporation of examples of contractual provisions that ensure quality call completion—are required. *Id.* To the contrary, while covered providers ''must exercise responsibility for the performance of the entire intermediate provider call path to help ensure that calls to rural areas are completed,'' the *Second RCC Order* grants covered providers ''flexibility in how they fulfill this responsibility'' allowing each to ''determine the standards and methods best suited to their individual networks.'' The record evidence in this proceeding demonstrates that covered providers can, and do, utilize contractual restrictions to ensure call completion by downstream intermediate providers, including those with which there is no direct contractual relationship. For these reasons, we affirm our finding that the monitoring rule is supported by the record in this proceeding.

63. For the foregoing reasons, to the extent that USTelecom and commenters supporting its Petition rely on arguments concerning the costs associated with contractual negotiations that may be necessitated by the monitoring rule, we dismiss these arguments as having been previously considered and rejected by the Commission. To the extent that the Petition and supporting comments raise novel arguments in this proceeding, we dismiss these arguments on the merits, as discussed above.

IV. Final Regulatory Flexibility Analysis

64. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Third Further Notice of Proposed Rulemaking* (*Third RCC FNPRM*) for the Rural Call Completion proceeding. The Commission sought written public comment on the proposals in the *Third RCC FNPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this *Fourth Report and Order* (*Order*), the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

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

65. In this *Order,* we revise our rules to continue to address ongoing problems in completion of long-distance calls. Specifically, we establish intermediate provider service quality standards; modify the covered provider safe harbor, and sunset call data recording and retention requirements. These actions further implement the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act), and to continue ''to ensure the integrity of voice communications and to prevent unjust or unreasonable discrimination among areas of the United States in the delivery of such communications.''

66. First, we establish service quality standards for intermediate providers. Specifically, we require intermediate providers to take steps reasonably calculated to ensure that any calls that they handle are in fact completed. If an intermediate provider knows, or should know, that calls are not being completed to certain areas, the intermediate provider may be in violation of this general duty if it engages in acts or omissions that allow or effectively allow these conditions to persist. Intermediate providers must also ensure that any additional intermediate providers to which they hand off calls are registered with the Commission.

67. In addition, with respect to traffic destined for rural areas, intermediate providers must actively monitor the performance of any directly contracted downstream intermediate provider and, based on the results of such monitoring, take steps to address any identified performance issues with that provider. The Commission believes these rules will effectuate Congress's intent in passing the RCC Act, and further the Commission's efforts to ensure that all calls to rural areas are completed.

68. Due to the variety of providers and network technologies that may be subject to the Commission's service quality standards, the rules set forth in the *Order* grant intermediate providers compliance flexibility, thereby benefitting businesses of all sizes and their subscribers. The Order's intermediate provider service quality standards parallel those already applicable to covered providers under the *Second RCC Order* and earlier Commission orders and rulings, ensuring the Commission's rules effectively address rural call completion

issues while also avoiding unnecessary compliance burdens on intermediate providers—particularly those that serve dual roles as both covered and intermediate providers.

69. Second, we add a covered provider safe harbor to comply with the RCC Act. The service quality standards adopted in the *Order*—pursuant to the RCC Act—apply only to intermediate providers. However, the RCC Act's exemption is limited to covered providers. The *Order* therefore clarifies that covered providers qualifying for the safe harbor on or before February 26, 2019 will be exempt from the intermediate provider service quality rules when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission. Though the *Order* maintains the three preexisting safe harbor requirements without change, and retains the existing recording and retention safe harbor until those requirements expire, it adds § 64.2109 to add the application of the safe harbor to the *Order's* newly adopted service quality standards for intermediate providers.

70. Third, as proposed by the *Third RCC FNPRM,* we sunset the covered provider call data recording and retention requirements the Commission established in 2013, thus eliminating these requirements one year after the effective date of the service quality standards adopted in this *Order.* We conclude that the existing recording and retention rules are burdensome on covered providers, and the resulting data, as previously prescribed by the Commission, are of limited utility to us in discovering the source of rural call completion problems. We further conclude that a voluntary recording and retention scheme, using the metrics chosen by individual covered providers, will serve to best inform covered providers and the Commission of rural call completion issues and the best pathway to their resolution. As this will serve to effectively remove an information collection burden from all size businesses, small businesses should benefit from a removed information collection and retention burden as well.

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

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

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

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

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

73. 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 and by the rule revisions on which the NPRM seeks comment, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one 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.

74. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

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

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

77. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated

in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

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

79. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

80. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our rules.

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

82. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

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

84. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form

499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

85. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

86. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

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

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

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

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

91. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

92. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that

operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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

93. In implementing the RCC Act, first, the *Order* establishes service quality standards for intermediate providers. Specifically, it requires intermediate providers to take steps reasonably calculated to ensure that any calls that they handle are in fact completed. Due to the variety of providers and network technologies that may be subject to the Commission's service quality standards, the rules set forth in the *Order* grant intermediate providers compliance flexibility, thereby benefitting subscribers and entities of all sizes.

94. Second, the *Order* modifies the covered provider safe harbor to comply with the RCC Act. The service quality standards adopted in the *Order*—pursuant to the RCC Act—apply only to intermediate providers. However, the RCC Act's exemption is limited to covered providers. The *Order* therefore clarifies that covered providers qualifying for safe harbor on or before February 26, 2019 will be exempt from the intermediate provider service quality rules when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission. Though the *Order* maintains the three preexisting safe harbor requirements without change, it modifies § 64.2107 to reflect removal of the remaining data recording and retention requirements originally associated with the safe harbor, and the application of the safe harbor to the *Order's* newly adopted service quality standards for intermediate providers. Until the intermediate provider registry is established pursuant to the RCC Act, it is unknown to the Commission at this time the number of any size entities affected by this regulation.

95. The *Order* sunsets the remaining covered provider call data recording and retention requirements the Commission established in 2013, thus eliminating these requirements one year after the service quality standards in this *Order* become effective. As this will serve to effectively remove any information collection burden from all size entities, small entities should benefit from a removed information collection and retention burden as well.

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

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

97. In the *Order,* the Commission establishes intermediate provider service quality standards, modifies the covered provider safe harbor, and sunsets call data recording and retention. The Commission also directs the Wireline Competition Bureau to seek comment, one year from the effective date of the intermediate provider service quality standards, on the effectiveness of those standards in addressing rural call completion issues.

98. As the RCC Act mandates, this *Order* first adopts service quality standards for intermediate providers. Specifically, we require intermediate providers to take steps reasonably calculated to ensure that any calls that they handle are in fact completed. If an intermediate provider knows, or should know, that calls are not being completed to certain areas, the intermediate provider may be in violation of this general duty if it engages in acts or omissions that allow or effectively allow these conditions to persist. Intermediate providers must also establish processes to monitor their rural call completion performance and ensure that any additional intermediate providers to which they hand off calls are registered with the Commission.

99. One alternative considered—and declined—is mandating compliance with the with the three ATIS best practices as proposed in the *Third RCC FNPRM,* and instead adopt a set of flexible standards for intermediate providers based on our rules for covered providers. We agree with commenters who argue that mandating compliance with the three ATIS best practices may be impractical or unduly burdensome for some intermediate providers, particularly those relying on older network technologies to provide service. However, the Commission will treat intermediate provider compliance with the ATIS best practices as a safe harbor demonstrating compliance with our service quality standards for intermediate providers of all sizes.

100. Second, we add the covered provider safe harbor to comply with the RCC Act. The service quality standards adopted in the *Order*—pursuant to the RCC Act—apply only to intermediate providers. However, the RCC Act's exemption is limited to covered providers. The *Order* therefore clarifies that covered providers qualifying for safe harbor on or before February 26, 2019 will be exempt from the intermediate provider service quality rules when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission. Though the *Order* maintains the three preexisting safe harbor requirements without change, and retains the existing recording and retention safe harbor until those requirements expire, it adds § 64.2109 to add the application of the safe harbor to the *Order's* newly adopted service quality standards for intermediate providers. Because no small entities have previously filed for safe harbor in this proceeding, the Commission is confident the economic impact of this change upon small entities is minimal.

V. Procedural Matters

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

102. *Paperwork Reduction Act.* As the Commission is hereby sunsetting the remaining rural call completion data recording and retention requirements, thereby eliminating an information collection in its entirety, this *Fourth Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

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

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

VI. Ordering Clauses

105. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), 202(a), 217, and 262 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 217, and 262, this *Fourth Report and Order is adopted*.

106. *It is further ordered* that part 64 of the Commission's rules *are amended* as set forth in the Final Rules.

107. *It is further ordered* that, pursuant to §§ 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this *Fourth Report and Order shall be effective* 30 days after publication of a summary in the **Federal Register**.

108. *It is further ordered* that pursuant to the authority contained in sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262, NTCA's Petition for Reconsideration filed on June 11, 2018 in WC Docket No. 13–39 is *denied*.

109. *It is further ordered* that pursuant to the authority contained in sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262, USTelecom's Petition for Reconsideration filed on June 11, 2018 in WC Docket No. 13–39 is *denied*.

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

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

List of Subjects in 47 CFR Part 64

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

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends part 64 of title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 2. Amend § 64.2103 by adding paragraph (g) to read as follows:

§ 64.2103 Retention of call attempt records.

* * * * *

(g) The provisions of this section shall expire on September 15, 2020.

■ 3. Amend § 64.2107 by adding paragraph (d) to read as follows:

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

* * * * *

(d) The provisions of this section shall expire on September 15, 2020.

■ 4. Add § 64.2109 to read as follows:

§ 64.2109 Safe harbor from intermediate provider service quality standards.

(a)(1) A covered provider may qualify as a safe harbor provider under this subpart if it files, in WC Docket No. 13–39, one of the following certifications, signed under penalty of perjury by an officer or director of the covered provider regarding the accuracy and completeness of the information provided:

''I ____(name), ____(title), an officer of ____(entity), certify that ____(entity) uses no intermediate providers;'' or

''I ____(name), ____(title), an officer of ____(entity), certify that ____(entity) restricts by contract any intermediate provider to which a call is directed by ____(entity) from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem. I certify that any nondisclosure agreement with an intermediate provider permits ____(entity) to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent local exchange carrier(s) whose incoming long-distance calls are affected by the intermediate provider's performance. I certify that ____(entity) has a process in place to monitor the performance of its intermediate providers.''

(2) The certification in paragraph (a)(1) of this section must be submitted:

(i) For the first time on or before February 26, 2019; and

(ii) Annually thereafter.

(b) The requirements of § 64.2119 shall not apply to intermediate provider traffic transmitted by safe harbor qualifying covered providers functioning as intermediate providers.

■ 5. Add § 64.2119 to subpart V to read as follows:

§ 64.2119 Intermediate provider service quality standards.

Any intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission must abide by the following service quality standards:

(a) *Duty to complete calls.* Intermediate providers must take steps reasonably calculated to ensure that all covered voice communications that traverse their networks are delivered to their destination. An intermediate provider may violate this duty to complete calls if it knows, or should know, that calls are not being completed to certain areas, and it engages in acts or omissions that allow, or effectively allow, these conditions to persist.

(b) *Rural call completion performance monitoring.* For each intermediate provider with which it contracts, an intermediate provider shall:

(1) Monitor the intermediate provider's performance in the completion of call attempts to rural telephone companies; and

(2) Based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing that provider for sustained poor performance.

(c) *Registration of subsequent intermediate providers.* Intermediate providers shall ensure that any additional intermediate providers to which they hand off calls are registered

with the Commission pursuant to § 64.2115.

[FR Doc. 2019–11267 Filed 6–3–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–XG950

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule.

SUMMARY: NMFS closes the Gulf of Mexico Angling category incidental fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches curved fork length or greater)) Atlantic bluefin tuna (BFT). This action is being taken to prevent overharvest of the Angling category Gulf of Mexico trophy BFT subquota.

DATES: Effective 11:30 p.m., local time, May 31, 2019 through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260 or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

Angling Category Large Medium and Giant Gulf of Mexico ''Trophy'' Fishery Closure

The 2019 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2019. The Angling category season opened January 1, 2019, and continues through December 31, 2019. The currently codified Angling category quota is 232.4 metric tons (mt), of which 5.3 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.8 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Based on reported landings from the NMFS Automated Catch Reporting System, NMFS has determined that the codified Angling category Gulf of Mexico trophy BFT subquota of 1.8 mt has been reached and that a closure of the Gulf of Mexico trophy BFT fishery is warranted. Therefore, retaining, possessing, or landing large medium or giant BFT in the Gulf of Mexico by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on May 31, 2019. This closure will remain effective through December 31, 2019. This action is intended to prevent overharvest of the Angling category Gulf of Mexico trophy BFT subquota, and is taken consistent with the regulations at § 635.28(a)(1).

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches and any further Angling category adjustments, is available at *hmspermits.noaa.gov* or by calling (978) 281–9260. HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure.*

HMS Charter/Headboat and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the Angling category Gulf of Mexico trophy fishery is necessary to prevent overharvest of the Gulf of Mexico trophy fishery subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov.*

These fisheries are currently underway, and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the Gulf of Mexico trophy BFT fishery before additional landings of these sizes of BFT occur. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: May 30, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–11609 Filed 5–30–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180625576–8999–02]

RIN 0648–BI94

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–2020 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial and recreational groundfish fisheries. This action is intended to allow commercial and recreational fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, phone: 206–526–4491 or email: *karen.palmigiano@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2019–2020 biennium for most species managed under the PCGFMP on December 12, 2018 (83 FR 63970). In general, the management measures set at the start of the biennial specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its March 6–12, and April 10–16, 2019, meetings, the Council recommended seven adjustments to the 2019–2020 PCGFMP management measures, including: (1) Increasing the limited entry fixed gear (LEFG) and open access (OA) trip limits for the Minor Nearshore Rockfish complex from 42° North Latitude (N lat.) to 40°10′ N lat.; (2) increasing the LEFG and OA trip limits for the deeper nearshore rockfish complex south of 40°10′ N lat.; (3) increasing the LEFG and OA trip limits for blackgill rockfish south of 40°10′ N lat.; (4) increasing the LEFG and OA trip limits and recreational bag limit for lingcod south of 40°10′ N lat.; (5) increasing the California recreational canary rockfish bag limit; (6) increasing the California recreational black rockfish bag limit, and (7) transferring lingcod south of 40°10′ N lat. from the research and incidental open access (IOA) set-asides to the set asides for exempted fishing permits (EFPs).

Pacific Coast groundfish fisheries are managed using harvest specifications developed biennially and based on the best scientific information available at that time. Through the harvest specifications, the Council specifies annual catch limits (ACLs). Every species will either have its own designated ACL or be included in a multi-species ACL. Deductions from the ACL are then made to account for research, Pacific Coast treaty Indian tribal fisheries, scientific research, incidental open access (IOA) fisheries, and exempted fishing permits, resulting in the fishery harvest guideline. The fishery harvest guideline for most species is then allocated between the trawl and non-trawl fisheries based on percentages adopted under Amendment 21 to the PCGFMP (*i.e.,* lingcod), or decided through the biennial specifications process (*i.e.,* canary rockfish). Some species' harvest guidelines are not allocated between the trawl and non-trawl fisheries because historically there has been low attainment (*i.e.,* Minor Nearshore Rockfish) or the species is allocated to a specific state (*i.e.,* California black rockfish) and catch is controlled through state management measures. Each of the adjustments to management measures discussed below are based on updated fisheries information through the 2018 fishing year that was unavailable when the original analysis was completed.

Minor Nearshore Rockfish Complex North of 40°10′ N Lat.

The Minor Nearshore Rockfish complex north of 40°10′ N lat. includes 13 species of rockfish. The ACLs for the Minor Nearshore Rockfish complex north of 40°10′ N lat. are 81 mt in 2019 and 82 mt in 2020 with a 79 mt fishery harvest guideline in both years. Unlike other species, the coastwide harvest guideline is not allocated between trawl and non-trawl sectors because the trawl impacts are so minor. Instead, Washington, Oregon, and California have a sharing agreement and divide the federal harvest guideline for each of the species in the complex into state landing targets. The States then divide their shares between their commercial fixed gear and recreational sectors. Using the harvest guidelines along with catch information, the Council designates management measures to maximize catch within these state target limits while also limiting impacts to co-occurring rebuilding species such as yelloweye rockfish.

Most vessels fishing in California's nearshore fishery do not hold a federal limited entry permit and are considered federal OA fixed gear vessels. California restricts participation in the nearshore fishery by requiring a state limited entry permit to harvest nearshore groundfish species. Trip limits for these fisheries are designed to keep catch within nearshore species state and federal limits while providing a year-round fishing opportunity, if possible. The total California share of the coastwide harvest guideline the Minor Nearshore Rockfish complex is 36.6 mt for 2019 and 37.9 mt for 2020.

When the Council developed the 2019 and 2020 management measures for California's Minor Nearshore Rockfish

complex in 2018, commercial catch data was only available through the end of the 2016 fishing year. State landing targets were based on the projected mortality from 2017 trip limits rather than average landings to account for potential additional effort within the fishery due to newly adopted permit transfer provisions. LEFG and OA fixed gear trip limits for the Minor Nearshore Rockfish complex were set for 2019 and 2020 at the same levels used in the 2017–2018 harvest specifications in order to remain precautionary due to uncertainty about potential increasing effort. The current trip limit for the both the LEFG and OA fisheries for period 1 (January–February) is 8,500 pounds (lb) (3,856 kilograms [kg]) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish. The current trip limit for period 2 (March–April) through period 6 (November–December) is 7,000 lb (3,175 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish. Black rockfish is specified separately from the other nearshore species, because it has its own state-specific ACLs. In March 2019, the Groundfish Management Team (GMT) updated projections for the Minor Nearshore Rockfish complex with commercial fishing data through the end of 2018. Estimated mortality in 2018 for California's Minor Nearshore Rockfish complex, not including black rockfish, between 42° and 40°10′ N lat. was 6.6 mt for the commercial fishery and 16.1 mt for recreational fisheries. Total estimated mortality was 22.7 mt, or 56 percent of the 2018 harvest guideline (40.2 mt).

Based on this updated information the Council recommended adjusting the commercial sector trip limits for period 2 through period 6 from 7,000 lb (3,175 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish to 7,000 lb (3,175 kg) per two months, no more than 1,500 lb (680 kg) of which may be species other than black rockfish. Under the current trip limits, the current catch for period 1 (January through February) in 2019 for the Minor Nearshore Rockfish complex between 42° N lat. and 40°10′ N lat. is 0.5 mt. Without an increase to the Minor Nearshore Rockfish complex trip limit for the remainder of 2019, projected attainment of the California share of the harvest guideline is 68.4 percent (25 mt total, including 12.4 mt from the recreational sector and 12.5 mt from the commercial sector, of the 36.6 mt) and projected attainment of the coastwide harvest guideline is 31.9 percent (79 mt). Projections based on increasing the trip limits suggest attainment may increase catch for Minor Nearshore Rockfish north of 40°10′ N lat. by 2.71 mt, from 12.6 mt to 14.7 mt, for the commercial sector. Total mortality of the complex for the commercial and recreational sectors may increase to 27.71 mt or 74 percent of the California share of the harvest guideline (36.6 mt).

Therefore, in March 2019 the Council recommended and NMFS is implementing increases to LEFG and OA fixed gear trip limits by modifying Table 2 (North) to part 660, subpart E, and Table 3 (North) to part 660, subpart F. The trip limits for period 2 through period 6 for minor nearshore rockfish for LEFG and OA fixed gear will increase from 7,000 lb (3,175 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish to 7,000 lb (3,175 kg) per two months, no more than 1,500 lb (680 kg) of which may be species other than black rockfish beginning June 4, 2019.

Deeper Nearshore Rockfish South of 40°10′ N Lat.

The Minor Nearshore Rockfish complex south of 40°10′ N lat. is subdivided into two management categories: (1) Shallow nearshore rockfish (black-and-yellow rockfish, China rockfish, gopher rockfish, grass rockfish, and kelp rockfish), and (2) deeper nearshore rockfish (comprised of brown rockfish, calico rockfish, copper rockfish, olive rockfish, quillback rockfish, and treefish). California restricts participation in the nearshore fishery by requiring vessels have a shallow or a deeper nearshore permit which correspond to the type of permit needed in California to fish those species. At the March 2018 meeting, members of industry requested the Council consider increasing the LEFG and OA trip limits for vessels targeting species in the deeper nearshore rockfish complex only; no requests were received in regard to the shallow nearshore rockfish complex. The ACL for the Minor Nearshore Rockfish complex south of 40°10′ N lat. is 1,300 mt in 2019 with a 1,138 mt harvest guideline and 1,322 mt for 2020 with a 1,159 mt harvest guideline. The harvest guideline is shared between vessels targeting shallow and deeper nearshore rockfish.

When the Council developed the 2019–2020 management measures for California's deeper nearshore rockfish in 2018, commercial catch data through the end of the 2017 fishing year was not available. Instead, the analysis used data from previous fishing years and assumptions were made about fishing effort in the 2017 fishing year based on this data to project impacts through the remainder of 2017. Based on this information, trip limits for deeper nearshore rockfish for LEFG and OA fixed gear were set in 2019 and 2020 at the same levels used in the 2017–2018 harvest specifications. The current trip limit for Period 1 (January–February) is 1,000 lb (454 kg) per two months. Period 2 (March–April) is closed. The current trip limit for Period 3 through Period 6 is 1,000 lb (454 kg) per two months.

In March 2019, the GMT updated the projections for the nearshore rockfish species south of 40°10′ N lat. with commercial fishing data through the end of 2018. Estimated mortality for 2018 for these species was 682.5 mt, or 58 percent, of a 1,179 mt harvest guideline. Under the current trip limits, projected landings for the commercial sector in 2019 for nearshore rockfish south of 40°10′ N lat. is 584.5 mt of 1,138 mt harvest guideline, or 51.37 percent. Of that vessels are estimated to take 46 mt of deeper nearshore rockfish species, which is 10 mt less than the 2019–20 biennial harvest specifications analysis projected for 2019. Increasing the commercial trip limits for deeper nearshore rockfish is expected to increase commercial landings by 2 mt to 48 mt resulting in 0.17 percent increase in overall attainment of the harvest guideline from 51.37 percent (584.5 mt) to 51.54 percent (586.5 mt) of the harvest guideline.

For these reasons, the Council recommended and NMFS is implementing an increase to the LEFG and OA fixed gear trip limits for deeper nearshore rockfish south of 40°10′ N lat. NMFS is modifying Table 2 (South) part 660, subpart E, and Table 3 (South) part 660, subpart F, trip limits for deeper nearshore minor rockfish. The trip limits will increase from 1,000 lb (454 kg) per two months to 1,200 lb (544 kg) per two months beginning June 4, 2019 with Period 3 (May–June) and extending through Period 6. Period 2 will remain closed.

Impacts to Yelloweye Rockfish From Inseason Changes to Nearshore Fisheries

The primary objective of nearshore fisheries north and south of 40°10′ N lat. has been to maximize opportunity for target stocks while staying within the overfishing/rebuilding species limits, in particular yelloweye rockfish. Therefore, any time the Council considers an increase to trip limits for vessels targeting nearshore rockfish, impacts to yelloweye rockfish must also be considered. The 2019 yellow rockfish ACL is 48 mt and the harvest guideline is 42 mt. The nearshore harvest

guideline is 6.2 mt with a nearshore annual catch target of 4.9 mt. The 2019–2020 biennial harvest specifications analysis projected total mortality of yelloweye rockfish in California's nearshore fishery at 0.6 mt of their 1.6 mt share, of which 0.4 mt would be taken north of 40°10′ N lat. and 0.2 mt would be taken south. Using updated commercial fishery information through 2018, under the current trip limits projected impacts to yelloweye rockfish in 2019 resulting from vessels targeting nearshore rockfish north and south of 40°10′ N lat. are 0.59 mt. Increasing the trip limits for California's nearshore rockfish fishery north of 40°10′ N lat. would likely increase impacts to yelloweye rockfish by 0.1 mt resulting in 0.6 mt in cumulative impacts from vessels targeting nearshore rockfish north and south of 40°10′ N lat. These impacts are 0.7 mt less than California's share of the yelloweye rockfish harvest guideline for nearshore fisheries.

Blackgill Rockfish South of 40°10′ N Lat.

Blackgill rockfish is a component stock that is managed within the Slope Rockfish complexes north and south of 40°10′ N lat. The 2017 blackgill rockfish update assessment indicated the stock was at 39.4 percent depletion at the start of 2017 and is estimated to be at 40 percent in 2019. The 2019 blackgill rockfish south of 40°10′ N lat. harvest guideline is 158.9 mt, based on the blackgill rockfish contribution to the Slope Rockfish complex.

At its April 2019 Council meeting, under Agenda Item G.4., the Council rescinded their original final action for removing blackgill rockfish from the Slope Rockfish complex as was selected at the November 2015 Council meeting (Agenda Item D.7.a, Supplemental GMT Report 2, June 2015). Instead, the Council selected the No Action Alternative, resulting in blackgill rockfish south of 40°10′ N lat. remaining in the southern Slope Rockfish complex and maintaining the Amendment 21 formal sector allocation of 63 percent of the annual harvestable surplus (as defined by the fishery harvest guideline) of southern Slope Rockfish to trawl sectors and 37 percent of the annual harvestable surplus to non-trawl sectors. This results in allocating 100.1 mt to the trawl sector and 58.8 mt to the non-trawl sector in 2019, an increase of 13.3 mt over the 2018 non-trawl allocation (45.5 mt).

Once the Council selected the No Action Alternative, they recommended the GMT investigate the possibility of increasing the current trip limits for blackgill rockfish for LEFG and OA south of 40°10′ N lat. Increases to the current trip limits, which have been in place since 2015, had not been considered until now as constituents waited for implementation of Amendment 26 and removal of blackgill rockfish from the Slope Rockfish complex. Under the current slope and blackgill rockfish trip limits south of 40°10′ N lat., during periods 1–3 (January–June) LEFG vessels are allowed to harvest 40,000 lb (18,143 kg) per two months of slope rockfish, of which no more than 1,375 lb (624 kg) may be blackgill rockfish. During periods 3 through 6 (July through December), those limits increase to 40,000 lb (18,143 kg) per two months of slope rockfish, of which no more than 1,600 lb (726 kg) may be blackgill rockfish. Estimated mortality for the LEFG fishery under these limits is 20 mt. Vessels fishing in the OA fishery south of 40°10′ N lat. during periods 1–3 (January through June) are allowed to harvest 10,000 lb (4,536 kg) per two months, of which no more than 475 lb (215 kg) may be blackgill rockfish; for periods 4–6 (July through December) those limits increase to 10,000 lb (4,536 kg) per two months, of which no more than 550 lb (249 kg) may be blackgill rockfish. Estimated mortality for the OA fishery under these limits is 1.9 mt. Combined impacts to blackgill rockfish from the LEFG and OA sector are likely to be 21.9 mt or 37 percent of the 58.8 mt non-trawl allocation.

The GMT further investigated trip limit alternatives and found the limits for blackgill rockfish could be increased to 4,000 lb (1,814 kg) per two months for the LEFG vessels and up to 900 lb (408 kg) for the OA vessels. The estimated blackgill rockfish mortality for the LEFG fishery would be 41.7 mt and for the OA fishery it would be 2.6 mt. The cumulative impacts to blackgill rockfish would be 44.3 mt, 14.5 mt less than the non-trawl allocation of blackgill rockfish south of 40°10′ N lat. (58.8 mt).

Therefore, the Council recommended and NMFS is implementing increases to the blackgill rockfish trip limits for the LEFG and OA fisheries south of 40°10′ N lat. as follows. On June 4, 2019, the LEFG trip limits for periods 3–6 (May through December) would increase to 40,000 lb (18,143 kg) per two months of slope rockfish, of which no more than 4,000 lb (1,814 kg) may be blackgill rockfish, and the OA trip limits for period 3–6 (May through December) would increase to 10,000 lb (4,536 kg) per two months, of which no more than 800 lb (363 kg) may be blackgill rockfish.

Lingcod South of 40°10′ N Lat.

During development of the 2019–2020 harvest specifications, the Council recommended deviating from the default harvest control rules for lingcod north and south of 40°10′ N lat., reflecting greater confidence in the current stock assessment. The 2019 ACL for the northern stock is 4,871 mt with a fishery harvest guideline of 4,593 mt. The ACL for the southern stock is 1,039 mt with a fishery harvest guideline of 1,028 mt. The fishery harvest guideline is split between the trawl and non-trawl sectors according to the Amendment 21 allocations as specified at § 660.55(c) and Chapter 6 of the PCGFMP. Under this split, the trawl sector received 462.5 mt, or 45 percent, of the 2019 harvest guideline for lingcod south of 40°10′ N lat. and the non-trawl sector received 565.2 mt, or 55 percent, of the 2019 harvest guideline. The non-trawl percentage is shared between the limited entry fixed gear, open access, and recreational fisheries.

Between 2013 and 2018, the trawl sector had harvested less than 10 percent annually of their lingcod south allocation, while the non-trawl sector has harvested between 70 and 125 percent of their allocation annually during the same 5-year period. The non-trawl sector exceeded their allocation in 2015 and 2016 by at least 24 percent or 120 mt each year resulting in a less optimistic outlook for lingcod south of 40°10′ N lat. in 2017. The analysis completed in January 2018 for the 2019–2020 harvest specifications used fishery data through the 2016 fishing year which suggested a more precautionary approach for the recreational bag limit and OA trip limits was necessary to prevent the non-trawl allocation from being exceeded again.

At the April 2019 Council meeting, CDFW presented updated catch projections for 2019 and 2020 based on updated commercial and recreational catch information through 2018. Under the current trip limits for LEFG south of 40°10′ N lat. (Period 1: 200 lb [91 kg] per 2 months, Period 2: closed, Period 3: 800 lb [363 kg] per two months, Periods 4 and 5: 1,200 lb [544 kg], Period 6-November: 600 lb [272 kg], and Period 6-December: 300 lb [136 kg]) and OA fisheries (Period 1: 300 lb [136 kg] per two months, Period 2: closed, and Periods 3 through 6: 300 lb [136 kg]) commercial impacts are projected to be 40 mt. Under the one lingcod bag limit for recreational fisheries projected impacts for the recreational sector are 315 mt in 2019. Combined lingcod impacts for both LEFG and OA sectors is 365.4 mt or 65 percent of the 2019

non-trawl harvest guideline (565 mt) for lingcod south of 40°10′ N lat. Therefore, the Council recommended the GMT consider the impacts of increasing both the commercial trip limits and recreational bag limit for lingcod south of 40°10′ N lat.

Based on the GMT's analysis, increasing the trip limits for LEFG vessels targeting lingcod south of 40°10′ N lat. to 1,200 lb (544 kg) per two months for all remaining periods (assuming a June 1, 2019 implementation date) would increase the impacts to lingcod from 6.1 mt to 8.2 mt. Increasing the trip limits for OA vessels targeting lingcod south of 40°10′ N lat. to 500 lb (227 kg) for all remaining periods (assuming a June 1, 2019 implementation date) would increase the impacts to lingcod from 33.9 mt to 49.3 mt. Cumulative impacts for both sectors would increase from 40 mt to 58 mt. Increasing the recreational bag limit from one lingcod to two lingcod in 2019 would increase the impacts to lingcod from 223 mt to 411 mt. Total non-trawl impacts for both sectors would increase from 264 mt to 456 mt or from 47 percent of the non-trawl harvest guideline (565.2 mt) to 81 percent.

Therefore, the Council recommended and NMFS is implementing increases to commercial trip limits for LEFG and OA vessels beginning, June 4, 2019. LEFG trip limits will increase to 1,200 lb (544 kg) for all remaining periods and OA fishery trip limits will increase to 500 lb (227 kg) for all remaining periods. The recreational bag limit for vessels targeting lingcod south of 40°10′ N lat. in the recreational fishery will increase from one lingcod to two lingcod. The increase to the recreational bag limit for lingcod south of 40°10′ N lat. is effective upon publication of this notice.

Recreational Bag Limit Changes

At the March 2019 Council meeting, the GMT received a request from recreational fishing representatives to analyze an increase to the bag and sub-bag limits south of 40°10′ N lat. for lingcod, canary rockfish, and black rockfish. During development of the 2019–2020 harvest specifications, recreational catch information from 2018 was not yet available and limits were established based on recreational data from 2016 and preliminary data from the 2017 fishing year. The California Department of Fish and Wildlife (CDFW) provided updated recreational catch data through 2018 at the March 2019 Council meeting. Based on the following updated information and analysis, the Council recommended NMFS increase the lingcod, canary rockfish and black rockfish bag limits for the recreational sector. The Council's recommended recreational bag limit changes for Lingcod south of 40°10′ N lat. from the April 2019 meeting are discussed above.

Canary Rockfish

New data from 2018 show canary rockfish mortality was below the 2017 and 2018 California recreational harvest guidelines of 135 mt for each year. Estimated attainment was 61 percent (82.1 mt) of the recreational harvest guideline in 2017, and 43 percent (58.4 mt) in 2018. Using the full year of 2018 recreational data to project attainment in 2019 under the current two fish bag limit, vessels are expected to attain 81 percent (103 mt) of the 127.3 mt harvest guideline in 2019. Attainment is expected to increase to 86 percent in 2020 under a smaller harvest guideline (119.7 mt). Under a three fish bag limit for canary rockfish, expected attainment would be 117.4 mt, which is 92 percent of 2019 California recreational harvest guideline (127.3 mt) and 98 percent of the 2020 harvest guideline (119.7 mt). The GMT also considered projected attainment under a four fish bag limit, but did not recommend the Council take this option as it would likely result in exceeding the recreational harvest guideline in 2020.

Therefore, the Council recommend and NMFS is implementing an increase to the recreational bag limit for canary rockfish from two fish to three fish. Increasing the bag limit for canary rockfish will allow vessel operators to access healthy canary rockfish stock that had previously been off-limit to recreational fishing due to their overfished status. CDFW monitors canary rockfish catch weekly through its California Recreational Fisheries Survey. For these reasons, the Council recommended and NMFS is implementing an increase to the recreational sub-bag limit for canary rockfish from two to three fish at § 660.360 for the California recreational fishery.

Black Rockfish

In 2015, state-specific stock assessments were conducted for black rockfish which allowed the Council to consider state harvest limits beginning with the next biennium. In 2017, as part of the biennial harvest specifications, the Council recommended and NMFS established a California-specific ACL and harvest guideline for black rockfish (see Table 1a to part 660, subpart C) which is split north and south of 40°10′ N lat. Unlike other species, the harvest guideline is not allocated between the trawl and non-trawl sectors, but it is shared between the recreational and commercial fixed gear fisheries. Black rockfish is managed in the recreational sector through the use of a sub-bag limit which is part of the overall rockfish, cabezon, and greenling bag limit. In the commercial sector, black rockfish is part of the deeper nearshore fishery, and bimonthly trip limits are set separately north and south of 40°10′ N lat. (See the section above on the deeper nearshore fishery for more information on those commercial trip limits.)

Updated catch information for black rockfish from 2017 shows the combined commercial and recreational catch was 155 mt of a 333 mt harvest guideline or 46 percent. Combined commercial and recreational catch for black rockfish in 2018 was 140 mt of a 331 mt harvest guideline or 42 percent. The current recreational bag limit is three fish. Under the current three-fish sub-bag limit for black rockfish projected total commercial and recreational catch is 204.3 mt each year in 2019 and 2020, assuming the commercial sector catches their full 100 mt share (95 mt between 42° and 40°10′ N lat.; 5 mt south of 40°10′ N lat.). The projected attainment of black rockfish is 62 percent of the 328 mt harvest guideline in 2019 and 63 percent of the 325 mt harvest guideline in 2020.

In March 2019, the GMT projected total catch under four and five fish bag limits for black rockfish. Assuming the commercial sector takes their full share (100 mt), under a four fish bag limit, total catch of black rockfish increases to 265.1 mt or 81 percent of the 328 mt harvest guideline in 2019 and 82 percent of the 325 mt harvest guideline in 2020. Under a five fish bag limit, assuming the same commercial catch, total harvest increases to 327.4 mt or 100 percent of the harvest guideline in 2019 and 101 percent of the harvest guideline in 2020.

Increasing the bag limit for black rockfish will allow vessel operators to access healthy black rockfish stocks. CDFW monitors black rockfish catch weekly through its California Recreational Fisheries Survey. In the unlikely event that a state-specific harvest guideline is attained or projected to be attained prior to a Council meeting, NMFS has the regulatory authority at § 660.60(c)(4) to restrict catch of black rockfish. Therefore, the Council recommended and NMFS is implementing an increase to the black rockfish sub-bag limit from three to four fish at § 660.360 for the California recreational fishery. The Council did not select the higher five-fish sub-bag limit due to the potential for high catch around the San Francisco

Management Area. Instead the Council chose a more precautionary approach at this time and can adjust the bag limits in the future if new information warrants an adjustment.

Lingcod Off-the-Top Deductions

NMFS sets ACLs for non-whiting groundfish stocks and stock complexes as part of biennial harvest specifications and management measures. Deductions are made ''off-the-top'' from the ACL to ''set-aside'' an amount for various sources of mortality, including non-groundfish fisheries that catch groundfish incidentally, also called incidental open access (IOA) fisheries, as well as for research, tribal harvest, and recreational catch.

During development of the 2019–2020 harvest specifications the GMT made recommendations to the Council for off-the-top deductions from the ACLs, including deductions for EFPs for the 2019–2020 fishing years. On March 18, 2019, participants in the San Francisco Community Fishing Association EFP, also known as the Emley/Platt EFP, notified NMFS of an error in the allocation amount for lingcod south of 40°10′ N lat. At the Council's June 2018 meeting, the participants had requested a 1.5 mt set-aside each of lingcod north and south of 40°10′ N lat. for 2019 but had only received an amount for lingcod north. NMFS reviewed the GMT recommendations as well as the application and Council discussion on this topic and found the set-aside for lingcod south of 40°10′ N lat. for the Emley/Platt EFP was mistakenly left off the GMT recommendations to the Council. Therefore, in order to provide some relief to the participants in the Emley/Platt EFP, the GMT recommended the Council redistribute 1 mt of lingcod south of 40°10′ N lat. research catch and 0.5 mt of incidental open access catch. This redistribution results in an incidental open access amount of 7.6 mt, a research catch amount of 2.2 mt, and an EFP catch amount of 1.5 mt. Total mortality in both the IOA and research sectors has been less than their set-aside amounts between 2014 and 2017. The average research catch for lingcod south of 40°10′ N lat. during that time was 2.0 mt of out of a 3.2 mt set-aside. The average IOA catch for lingcod south of 40°10′ N lat. between 2014 and 2017 was 6.9 mt out of an 8.1 mt set-aside.

Therefore, NMFS is implementing the Council's recommendation to redistribute a total of 1.5 mt of lingcod south of 40°10′ N lat. from the set-asides for IOA and research catch to the set-aside for EFPs to be used by the participants in the Emley/Platt EFP.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Karen Palmigiano in NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document affect commercial and recreational fisheries in California. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2019–2020 harvest specifications and management measures which published on December 12, 2018 (83 FR 63970).

At its March and April 2019 meetings, the Council recommended increases to the commercial trip limits and recreational bag limits be implemented as soon as possible. Each of the adjustments to commercial and recreational management measures in this rule will create more harvest opportunity and allow fishermen to better attain species that are currently under attained without causing any additional impacts to the fishery, including to rebuilding stocks. Each of these recommended adjustments also rely on new catch data that were not available and thus not considered during the 2019–2020 biennial harvest specifications process. New catch information through the end of the 2018 fishing year shows that attainment of these target species (canary, black, blackgill rockfish, and lingcod south of 40°10′ N lat., and Nearshore Rockfish complexes north and south of 40°10′ N lat.) has been below 60 percent of their respective management points (*i.e.,* harvest guideline, annual catch limit, or non-trawl allocation) in 2018 and would likely remain below their state catch targets under status quo limits in 2019 and 2020. While it is difficult to assess the specific overall economic impact, this action would provide immediate economic benefits to the fishing industry. As an example, the 2018 commercial minor nearshore rockfish landings accounted for 5.1 percent of ex-vessel revenue from the groundfish fishery in California, and the ex-vessel revenue for the California nearshore fixed gear fleet targeting minor nearshore rockfish in 2018 was $560,937. The increase in trip limits for the nearshore fleet could provide an increase in ex-vessel revenue of $69,753, or 11 percent, based on average price per pound of all minor nearshore rockfish species combined. Increased trip limits for lingcod and blackgill rockfish would provide immediate economic benefits for the LEFG and OA sectors. The blackgill rockfish trip limits have been in place since 2015, even though the species has been under-attained compared to its contribution to the non-trawl allocation of the southern Slope Rockfish complex. California accounts for 84 percent of the coastwide groundfish recreational trips, with 742,235 average annual recreational marine boat trips from 2012–2016. Providing increased retention for recreational bag limits came at the direct request of an industry representative who expressed interest in pursuing these target species which in turn, is expected to provide a positive economic benefit to charter operations, private skiff anglers and associated fish businesses. Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial and recreational sectors because much of the fishing season would be over before the new regulations could be implemented. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

Therefore, the NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial and recreational fisheries by increasing opportunity and relieving participants of the more restrictive trip and bag limits. These adjustments were requested by the Council, as well as members of industry during the Council's March and April 2019 meetings, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications

and management measures established through a notice and comment rulemaking for 2019–2020 (82 FR 63970).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: May 30, 2019.

Jennifer M. Wallace,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Revise Table 1a to part 660, subpart C, to read as follows:

TABLE 1a TO PART 660, SUBPART C—2019, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG

[Weights in metric tons]

Stocks/stock complexes	Area	OFL	ABC	ACL [a]	Fishery HG [b]
COWCOD [c]	S of 40°10′ N lat	74	67	10	8
COWCOD	(Conception)	61	56	NA	NA
COWCOD	(Monterey)	13	11	NA	NA
YELLOWEYE ROCKFISH [d]	Coastwide	82	74	48	42
Arrowtooth Flounder [e]	Coastwide	18,696	15,574	15,574	13,479
Big Skate [f]	Coastwide	541	494	494	452
Black Rockfish [g]	California (S of 42° N lat.)	344	329	329	328
Black Rockfish [h]	Washington (N of 46°16′ N lat.)	312	298	298	280
Bocaccio [i]	S of 40°10′ N lat	2,194	2,097	2,097	2,051
Cabezonz [j]	California (S of 42° N lat)	154	147	147	147
California Scorpionfish [k]	S of 34°27′ N lat	337	313	313	311
Canary Rockfish [l]	Coastwide	1,517	1,450	1,450	1,383
Chilipepper Rockfish [m]	S. of 40°10′ N lat	2,652	2,536	2,536	2,451
Darkblotched Rockfish [n]	Coastwide	800	765	765	731
Dover Sole [o]	Coastwide	91,102	87,094	50,000	48,404
English Sole [p]	Coastwide	11,052	10,090	10,090	9,874
Lingcod [q]	N of 40°10′ N lat	5,110	4,885	4,871	4,593
Lingcod [r]	S of 40°10′ N lat	1,143	1,093	1,039	1,028
Longnose Skate [s]	Coastwide	2,499	2,389	2,000	1,852
Longspine Thornyhead [t]	N of 34°27′ N lat	4,112	3,425	2,603	2,553
Longspine Thornyhead [u]	S.of 34°27′ N lat			822	821
Pacific Cod [v]	Coastwide	3,200	2,221	1,600	1,094
Pacific Whiting [w]	Coastwide	(w)	(w)	(w)	(w)
Pacific Ocean Perch [x]	N of 40°10′ N lat	4,753	4,340	4,340	4,318
Petrale Sole [y]	Coastwide	3,042	2,908	2,908	2,587
Sablefish [z]	N of 36° N lat	8,489	7,750	5,606	*
Sablefish [aa]	S of 36° N lat			1,990	1,986
Shortbelly Rockfish [bb]	Coastwide	6,950	5,789	500	483
Shortspine Thornyhead [cc]	N of 34°27′ N lat	3,089	2,573	1,683	1,618
Shortspine Thornyhead [dd]	S of 34°27′ N lat			890	889
Spiny Dogfish [ee]	Coastwide	2,486	2,071	2,071	1,738
Splitnose Rockfish [ff]	S of 40°10′ N lat	1,831	1,750	1,750	1,733
Starry Flounder [gg]	Coastwide	652	452	452	433
Widow Rockfish [hh]	Coastwide	12,375	11,831	11,831	11,583
Yellowtail Rockfish [ii]	N. of 40°10′ N lat	6,568	6,279.	6,279	5,234
Black Rockfish/Blue Rockfish/Deacon Rockfish [jj]	Oregon (Between 46°16′ N lat. and 42° N lat.)	677	617	617	616
Cabezon/Kelp Greenling [kk]	Oregon (Between 46°16′ N lat. and 42° N lat.)	230	218	218	218
Cabezon/Kelp Greenling [ll]	Washington (N of 46°16′ N lat.)	13	11	11	11
Nearshore Rockfish [mm]	N of 40°10′ N lat	91	81	81	79
Shelf Rockfish [nn]	N of 40°10′ N lat	2,309	2,054	2,054	1,977
Slope Rockfish [oo]	N of 40°10′ N lat	1,887	1,746	1,746	1,665
Nearshore Rockfish [pp]	S of 40°10′ N lat	1,300	1,145	1,142	1,138
Shelf Rockfish [qq]	S of 40°10′ N lat	1,919	1,625	1,625	1,546
Slope Rockfish [rr]	S of 40°10′ N lat	856	744	744	724
Other Flatfish [ss]	Coastwide	8,750	6,498	6,498	6,249
Other Fish [tt]	Coastwide	286	239	239	230

* See Table 1c.

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Cowcod south of 40°10′ N lat. 2 mt is deducted from the ACL to EFP fishing (less than 0.1 mt) and research activity (2 mt), resulting in a fishery HG of 8 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 6 mt is being set for the Conception and Monterey areas combined.

[d] Yelloweye rockfish. The 48 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 6.1 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.62 mt), EFP catch (0.24 mt) and research catch (2.92 mt), resulting in a fishery HG of 42 mt. The non-trawl HG is 38.6 mt. The non-nearshore HG is 2.0 mt and the nearshore HG is 6.0 mt. Recreational HGs are: 10 mt (Washington); 8.9 mt (Oregon); and 11.6 mt (California). In addition, there are the following ACTs: Non-nearshore (1.6 mt), nearshore (4.7 mt), Washington recreational (7.8 mt), Oregon recreational (7.0 mt), and California recreational (9.1 mt).

[e] Arrowtooth flounder. 2,094.9 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), EFP fishing (0.1 mt), and research catch (13 mt), resulting in a fishery HG of 13,479 mt.

[f] Big skate. 41.9 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (21.3 mt), EFP fishing (0.1 mt), and research catch (5.5 mt), resulting in a fishery HG of 452 mt.

[g] Black rockfish (California). 1.3 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt) and incidental open access fishery (0.3 mt), resulting in a fishery HG of 328 mt.

[h] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 280 mt.

[i] Bocaccio south of 40°10′ N lat. The stock is managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 46.1 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt), EFP catch (40 mt) and research catch (5.6 mt), resulting in a fishery HG of 2,051 mt. The California recreational fishery south of 40°10′ N lat. has an HG of 863.4 mt.

[j] Cabezon (California). 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 147 mt.

[k] California scorpionfish south of 34°27′ N lat. 2.4 mt is deducted from the ACL to accommodate the incidental open access fishery (2.2 mt) and research catch (0.2 mt), resulting in a fishery HG of 311 mt.

[l] Canary rockfish. 67.1 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.3 mt), EFP catch (8 mt), and research catch (7.8 mt), resulting in a fishery HG of 1,383 mt. Recreational HGs are: 47.1 mt (Washington); 70.7 mt (Oregon); and 127.3 mt (California).

[m] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 84.9 mt is deducted from the ACL to accommodate the incidental open access fishery (11.5 mt), EFP fishing (60 mt), and research catch (13.4 mt), resulting in a fishery HG of 2,451 mt.

[n] Darkblotched rockfish. 33.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.6 mt), and research catch (8.5 mt) resulting in a fishery HG of 731 mt.

[o] Dover sole. 1,595.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (49.3 mt), EFP fishing (0.1 mt), and research catch (49.2 mt), resulting in a fishery HG of 48,404 mt.

[p] English sole. 216.2 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (8.1 mt), EFP fishing (0.1 mt), and research catch (8 mt), resulting in a fishery HG of 9,874 mt.

[q] Lingcod north of 40°10′ N lat. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (9.8 mt), EFP catch (1.6 mt) and research catch (16.6 mt), resulting in a fishery HG of 4,593 mt.

[r] Lingcod south of 40°10′ N lat. 11.3 mt is deducted from the ACL to accommodate the incidental open access fishery (8.1 mt) and research catch (3.2 mt), resulting in a fishery HG of 1,028 mt. On June 4, 2019 1 mt of research catch and 0.5 mt of incidental open access catch were redistributed to the deduction for EFP catch. This redistribution results in an incidental open access amount of 7.6 mt, a research catch amount of 2.2 mt, and an EFP catch amount of 1.5 mt.

[s] Longnose skate. 148.3 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (5.7 mt), EFP catch (0.1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,852 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 50.4 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (6.2 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,553 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 1.4 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 821 mt.

[v] Pacific cod. 506.2 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.5 mt), EFP fishing (0.1 mt), and the incidental open access fishery (0.6 mt), resulting in a fishery HG of 1,094 mt.

[w] Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2019 meeting.

[x] Pacific ocean perch north of 40°10′ N lat. 22.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), EFP fishing (0.1 mt), and research catch (3.1 mt) resulting in a fishery HG of 4,318 mt.

[y] Petrale sole. 320.6 mt is deducted from the ACL to accommodate the Tribal fishery (290 mt), the incidental open access fishery (6.4 mt), EFP catch (0.1 mt), and research catch (24.1 mt), resulting in a fishery HG of 2,587 mt.

[z] Sablefish north of 36° N lat. The 40-10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N lat., using the 2003–2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N lat. and 26.2 percent apportioned south of 36° N lat. The northern ACL is 5,606 mt and is reduced by 561 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 561 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 1,990 mt (26.2 percent of the calculated coastwide ACL value). 4.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt) and research catch (2.4 mt), resulting in a fishery HG of 1,986 mt.

[bb] Shortbelly rockfish. 17.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt), EFP catch (0.1 mt), and research catch (8.2 mt), resulting in a fishery HG of 483 mt.

[cc] Shortspine thornyhead north of 34°27′ N lat. 65.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (4.7 mt), EFP catch (0.1 mt), and research catch (10.5 mt), resulting in a fishery HG of 1,618 mt for the area north of 34°27′ N lat.

[dd] Shortspine thornyhead south of 34°27′ N lat. 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt) and research catch (0.7 mt), resulting in a fishery HG of 889 mt for the area south of 34°27′ N lat.

[ee] Spiny dogfish. 333 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (22.6 mt), EFP catch (1.1 mt), and research catch (34.3 mt), resulting in a fishery HG of 1,738 mt.

[ff] Splitnose rockfish south of 40°10′ N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N lat. 16.6 mt is deducted from the ACL to accommodate the incidental open access fishery (5.8 mt), research catch (9.3 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,733 mt.

[gg] Starry flounder. 18.8 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research catch (0.6 mt), and the incidental open access fishery (16.1 mt), resulting in a fishery HG of 433 mt.

[hh] Widow rockfish. 248.4 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (3.1 mt), EFP catch (28 mt) and research catch (17.3 mt), resulting in a fishery HG of 11,583 mt.

[ii] Yellowtail rockfish north of 40°10′ N lat. 1,045.1 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (4.5 mt), EFP catch (20 mt) and research catch (20.6 mt), resulting in a fishery HG of 5,234 mt.

[jj] Black rockfish Blue rockfish Deacon rockfish (Oregon). 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.3 mt) and EFP catch (0.9 mt), resulting in a fishery HG of 616 mt.

[kk] Cabezon kelp greenling (Oregon). 0.2 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 218 mt.

[ll] Cabezon kelp greenling (Washington). There are no deductions from the ACL so the fishery HG is equal to the ACL of 11 mt.

[mm] Nearshore Rockfish north of 40°10′ N lat. 2.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP fishing (0.1 mt), research catch (0.3 mt) and the incidental open access fishery (0.9 mt), resulting in a fishery HG of 79 mt.

[nn] Shelf Rockfish north of 40°10′ N lat. 76.9 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (17.7 mt), EFP catch (4.5 mt), and research catch (24.7 mt), resulting in a fishery HG of 1,977 mt.

[oo] Slope Rockfish north of 40°10′ N lat. 80.8 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (21.7 mt), EFP catch (1.5 mt), and research catch (21.6 mt), resulting in a fishery HG of 1,665 mt.

[pp] Nearshore Rockfish south of 40°10′ N lat. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,138 mt.

[qq] Shelf Rockfish south of 40°10′ N lat. 79.1 mt is deducted from the ACL to accommodate the incidental open access fishery (4.6 mt), EFP catch (60 mt), and research catch (14.5 mt), resulting in a fishery HG of 1,546 mt.

[rr] Slope Rockfish south of 40°10′ N lat. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (16.9 mt), EFP catch (1 mt), and research catch (2.3 mt), resulting in a fishery HG of 724 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40-10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 159 mt.

[ss] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: Butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 249.5 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (161.6 mt), EFP fishing (0.1 mt), and research catch (27.8 mt), resulting in a fishery HG of 6,249 mt.

[tt] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 8.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.8 mt) and research catch (0.1 mt), resulting in a fishery HG of 230 mt.

■ 3. Revise Tables 2 (North) and 2 (South) to part 660, subpart E, to read as follows:

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 06/01/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 month					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,300 lb/week, not to exceed 3,900 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9 10 11 12 13 14	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish[2/], Shortbelly, & Widow rockfish**	200 lb/ month					
17	**Yellowtail rockfish**	1,000 lb/ month					
18	**Canary rockfish**	300 lb/ 2 months					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish & Oregon Black/blue/deacon rockfish**						
21	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
22	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish				
23	**Lingcod[5/]**						
24	North of 42°00' N. lat.	2,000 lb/ 2 months					
25	42°00' N. lat. - 40°10' N. lat.	1,400 lb/2 months					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Other Fish[6/]& Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 06/01/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish		40,000 lb/ 2 months, of which no more than 4,000 lb may be blackgill rockfish			
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	1,300 lb/week, not to exceed 3,900 lb/ 2 months					
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months				2,500 lb/ 2 months	
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12 13 14 15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
18	**Whiting**	10,000 lb/ trip					
19	**Minor Shelf Rockfish[2/], Shortbelly rockfish, Widow rockfish (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.					
21	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	4,000 lb/ 2 months			
22	**Chilipepper**						
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly and widow rockfish limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA					
25	**Canary rockfish**						
26	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months					
27	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			
28	**Yelloweye rockfish**	CLOSED					
29	**Cowcod**	CLOSED					
30	**Bronzespotted rockfish**	CLOSED					
31	**Bocaccio**						
32	40°10' N. lat. - 34°27' N. lat.	1,000 lb/ 2 months					
33	South of 34°27' N. lat.	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
34	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
35	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	Deeper nearshore[5/]	1,000 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
37	**California Scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
38	**Lingcod[6/]**	200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
39	**Pacific cod**	1,000 lb/ 2 months					
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
41	**Longnose skate**	Unlimited					
42	**Other Fish[7/] & Cabezon in California**	Unlimited					
43	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Revise Tables 3 (North) and 3 (South) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 06/01/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	500 pounds/month					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	300 lb/ day; or one landing per week up to 1,200 lb, not to exceed 2,400 lb/ 2 months					
7	**Shortpine thornyheads**	50 lb/ month					
8	**Longspine thornyheads**	50 lb/ month					
9 10 11 12 13 14	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
		South of 42° N. lat., when fishing for "Other Flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
15	**Whiting**	300 lb/ month					
16	**Minor Shelf Rockfish[2/], Shortbelly rockfish, & Widow rockfish**	200 lb/ month					
17	**Yellowtail rockfish**	500 lb/ month					
18	**Canary rockfish**	300 lb/ 2 months					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
21	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish					
22	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,500 lb of which may be species other than black rockfish				
23	**Lingcod[5/]**						
24	North of 42°00' N. lat.	900 lb/ month					
25	42°00' N. lat. - 40°10' N. lat.	600 lb/ month					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Big skate**	Unlimited					
30	**Other Fish[6/] & Cabezon in California**	Unlimited					
31	**Oregon Cabezon/Kelp Greenling**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

TABLE 3 (North) cont'd

32	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*	
33	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 5 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.
34	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*	
35	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 06/01/2019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	South of 34°27' N. lat.	75 fm line[1/] - 150 fm line[1/](also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish		10,000 lb/ 2 months, of which no more than 800 lb may be blackgill rockfish			
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day or one landing per week up to 1,200 lb, not to exceed 2,400 lb/ 2 months					
7	South of 36°00' N. lat.	300 lb/ day, or one landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11 12 13 14 15 16	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
17	**Whiting**	300 lb/ month					
18	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	400 lb/ 2 months	CLOSED	400 lb/ 2 months			
20	South of 34°27' N. lat.	1,500 lb/ 2 months		1,500 lb/ 2 months			
21	**Canary rockfish**	300 lb/ 2 months	CLOSED	300 lb/ 2 months			
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**	500 lb/ 2 months	CLOSED	500 lb/ 2 months			
26	**Minor Nearshore Rockfish, California Black rockfish, & Oregon Black/Blue/Deacon rockfish**						
27	Shallow nearshore[4/]	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
28	Deeper nearshore[5/]	1,000 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
29	**California scorpionfish**	1,500 lb/ 2 months	CLOSED	1,500 lb/ 2 months			
30	**Lingcod[6/]**	300 lb/ month	CLOSED	500 lb/ month			
31	**Pacific cod**	1,000 lb/ 2 months					
32	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
33	**Longnose skate**	Unlimited					
34	**Big skate**	Unlimited					
35	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) cont'd

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**							
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**							
38		*40° 10′ N. lat. - 38° 00′ N. lat.*	*100 fm line 1/ - 200 fm line 1/*	*100 fm line 1/ - 150 fm line 1/*				*100 fm line 1/ - 200 fm line 1/*
39		*38° 00′ N. lat. - 34° 27′ N. lat.*	*100 fm line 1/ - 150 fm line 1/*					
40		*South of 34° 27′ N. lat.*	*100 fm line 1/ - 150 fm line 1/ along the mainland coast; shoreline - 150 fm line 1/ around islands*					
41			Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
42	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*							
43		South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. In § 660.360, paragraphs (c)(3)(ii)(B) and (c)(3)(iii)(B)(*2*) are revised to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex and lingcod. The bag limit is 10 RCG Complex fish per day coastwide. Retention of yelloweye rockfish, bronzespotted rockfish, and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 4 may be black rockfish, no more than 3 may be cabezon, and no more than 3 may be canary rockfish. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(iii) * * *

(B) * * *

(*2*) The bag limit between 40°10′ N lat. and the U.S. border with Mexico (Mendocino Management Area, San Francisco Management Area, Central Management Area, and Southern Management Area) is 2 lingcod per day.

* * * * *

[FR Doc. 2019–11610 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 84, No. 107
Tuesday, June 4, 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 HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0371]

RIN 1625–AA00

Safety Zone; City of North Charleston Fireworks, North Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain navigable waters of the Cooper River in North Charleston, SC. This action is necessary to provide for the safety of the general public, spectators, vessels, and the marine environment from potential hazards during a fireworks display. This proposed rulemaking would prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 19, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0371 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@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
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On April 23, 2019, the City of North Charleston notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 10 p.m. on July 4, 2019. The fireworks are to be launched from a barge along the bank of the Cooper River at River Front Park in North Charleston, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone from 8:45 p.m. to 10:15 p.m. on July 4, 2019. The safety zone would cover all navigable waters within 500 yards of the fireworks barge located at River Front Park on the Cooper River in North Charleston, SC. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 10 p.m. fireworks display. No vessel or person would be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for an hour and a half; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 proposed rule would 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 IV.A. above, this proposed rule would not have a significant economic impact on any owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management 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 made a preliminary determination 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 proposed rule involves a temporary safety zone lasting an hour and a half that would prohibit entry within 500 yards of a barge from which fireworks will be launched. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T07–0371 to read as follows:

§ 165.T07–0371 Safety Zone; City of North Charleston Fireworks, North Charleston, SC.

(a) *Location.* This rule establishes a safety zone on all waters within a 500-yard radius of the barge, from which fireworks will be launched on the bank of the Cooper River at River Front Park in North Charleston, SC.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local

officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced on July 4, 2019 from 8:45 p.m. until 10:15 p.m.

Dated: May 29, 2019.

J.W. Reed,

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

[FR Doc. 2019–11604 Filed 6–3–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0372]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks Patriots Point, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain navigable waters of the Cooper River at Patriot's Point in Charleston, SC. This action is necessary to provide for the safety of the general public, spectators, vessels, and the marine environment from potential hazards during a fireworks display. This proposed rulemaking would prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 19, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0372 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Justin.C.Heck@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
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On April 10, 2019, the Patriots Point Naval and Maritime Museum notified the Coast Guard that it would be conducting a fireworks display from 8 p.m. to 9 p.m. on July 4, 2019. The fireworks are to be launched from a barge along the bank of the Cooper River at Patriot's Point in Charleston, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone from 7:45 p.m. to 9:15 p.m. on July 4, 2019. The safety zone would cover all navigable waters within 500 yards of the fireworks barge located at Patriot's Point on the Cooper River in Charleston, SC. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 8 p.m. to 9 p.m. fireworks display. No vessel or person would be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM 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.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for an hour and a half; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 proposed rule would 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 IV.A. above, this proposed rule would not have a significant economic impact on any owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management 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 made a preliminary determination 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 proposed rule involves a temporary safety zone lasting an hour and a half that would prohibit entry within 500 yards of a barge from which fireworks will be launched. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T07–0372 to read as follows:

§ 165.T07–0372 Safety Zone; Patriots Point Fireworks, Charleston, SC.

(a) *Location.* This rule establishes a safety zone on all waters within a 500-yard radius of the barge, from which fireworks will be launched on the bank of the Cooper River at Patriot's Point in Charleston, SC.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced on July 4, 2019 from 7:45 p.m. until 9:15 p.m.

Dated: May 29, 2019.

J.W. Reed,

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

[FR Doc. 2019–11605 Filed 6–3–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1987–0002; FRL–9994–04–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Shaw Avenue Dump Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete the Operable Unit 1—Chemical Fill and Contaminated Soil (OU1) of the Shaw Avenue Dump Superfund Site (Site) located in Charles City, Floyd County, Iowa, from the National Priorities List, or NPL, and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan, or NCP. The EPA and the state of Iowa, through the Iowa Department of Natural Resources, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operations and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the Operable Unit 1—Chemical Fill and Contaminated Soil. The Operable Unit 2—Groundwater will remain on the NPL and is not being considered for deletion as part of this action.

DATES: Comments must be received on or before July 5, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–SFUND–1987–0002, by one of the following methods: *https://www.regulations.gov* follow the online instructions for submitting comments; email *hagenmaier.elizabeth@epa.gov* or *houston.pamela@epa.gov;* or by mail to Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 Attention: Elizabeth Hagenmaier, Superfund and Emergency Management Division (SEMD) or Pam Houston, Office of Intergovernmental Affairs/Community Section (OIG). Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at: EPA Region 7 Records Center at 11201 Renner Boulevard, Lenexa, Kansas 66219, between 8:00 a.m. and 4:00 p.m. Monday–Friday, excluding Federal holidays.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hagenmaier, Remedial Project Manager, U.S. Environmental Protection Agency Region 7, SEMD/LMSE, 11201 Renner Boulevard, Lenexa, KS 66219, telephone (913) 551–7939, email: *hagenmaier.elizabeth@epa.gov.*

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

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2003–0010, at *https://www.regulations.gov.* Alternatively, you may submit comments by email or mail to the persons and addresses listed in the **ADDRESSES** section of this document. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Introduction

The EPA Region 7 announces its intent to delete the OU1—Chemical Fill and Contaminated Soil of the Shaw Avenue Dump Superfund Site (Site), from the National Priorities List, or NPL, and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan, or NCP, and which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Shaw Avenue Dump Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

The EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section III of this document explains the criteria for deleting sites from the NPL. Section IV discusses procedures that the EPA is using for this action. Section V discusses the OU1—Chemical Fill and Contaminated Soil of the Shaw Avenue Dump Superfund Site and demonstrates how it meets the deletion criteria.

III. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such five-year reviews even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

IV. Deletion Procedures

The following procedures apply to deletion of the OU1—Chemical Fill and Contaminated Soil of the Site:

(1) The EPA consulted with the state Iowa, through the Iowa Department of Natural Resources, before developing this Notice of Intent for Partial Deletion.

(2) The EPA has provided the state thirty working days for review of this document prior to publication of it today.

(3) In accordance with the criteria discussed above, the EPA has determined that no further response is appropriate.

(4) The state of Iowa, through the Iowa Department of Natural Resources, has concurred with the deletion of the OU1—Chemical Fill and Contaminated Soil of the Shaw Avenue Dump Superfund Site, from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, the Charles City Press. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, the EPA will evaluate and respond appropriately to the comments before making a final decision to delete the OU1—Chemical Fill and Contaminated Soil of the Shaw Avenue Dump Superfund Site. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete the OU1—Chemical Fill and Contaminated Soil, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions, and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

V. Basis for Intended Partial Site Deletion

The following information provides EPA's rationale for deleting the OU1—Chemical Fill and Contaminated Soil of the Shaw Avenue Dump Superfund Site from the NPL.

Site Background and History

The Shaw Avenue Dump Superfund Site (Site), CERCLIS ID #IAD980630560 is located on the southeastern edge of Charles City, Floyd County, Iowa, approximately 600 feet from the Cedar River, near the intersection of Shaw Avenue and Clark Street. The Site is owned by Charles City, occupies approximately 24 acres of the Cedar River 100-year floodplain, and was operated as a municipal disposal site from prior to 1949 to 1964.

Charles City purchased the northern area of the Site in 1899 and continued to acquire adjoining property until 1964. The Site had been used for an unknown amount of time prior to 1949 as a landfill/dump and continued to be used as such through 1964.

Two areas in the northern half of the Site were used from 1949 to 1953 to dispose of an estimated 14,000 to 28,000 cubic feet of arsenic-contaminated solid waste generated by Salsbury Laboratories, Inc. (later Solvay Animal

Health, Inc.) from the chemical batch processing of arsenic compounds used in the production of animal pharmaceuticals. Salsbury Laboratories, Inc., also generated liquid waste during the period between 1949 and 1964 which it discharged to the municipal wastewater treatment plant. Charles City then disposed of the generated sludges in the Site's northern waste cells and in an undefined area on the southern portion of the Site. An estimated 10,000 tons of this sludge was disposed between 1949 and 1964. Remedial Investigation characterization of the disposal cells containing Salsbury wastes indicate the presence of significant concentrations of arsenic, cadmium, chromium, lead and volatile and semi-volatile organic compounds, or VOCs and SVOCs.

The Site was identified as a potentially hazardous waste site by the Iowa Department of Natural Resources, or IDNR in 1977. IDNR studied the Site and documented arsenic contamination in surface water in an abandoned gravel pit near the Site, issuing several reports between 1977 and 1981. No removal actions have been implemented at the Site. A preliminary assessment was conducted in 1984.

Remedial Investigation and Feasibility Study (RI/FS)

The Site was proposed for the NPL on September 18, 1985 (50 FR 37950) and listed as final on the NPL on July 22, 1987 (52 FR 27620). A remedial investigation, or RI, addressing soil contamination was initiated in 1988 and completed in 1990. A second RI addressing groundwater was initiated in 1992 and completed in 1999. In 1997, separate from the Record of Decision, or ROD, or consent order requirements discussed in the Selected Remedy section below, Charles City closed/abandoned two private residential wells located near the Site and provided these residences with connections to municipal water.

Forty individual compounds, in addition to a group of similar polyaromatic hydrocarbons, were identified as contaminants of potential concern in the soil, surface water, groundwater, and chemical fill at the Site. Major contaminants of concern include arsenic and cadmium. The chemical fill and the adjacent contaminated soil were considered the source of contamination for the groundwater. Using the characterization data collected during the 1990 RI, a human health baseline risk assessment was completed in 1991. Toxicity information for all chemicals of concern were evaluated and exposures were assumed based on reasonable assumptions about current and future uses of the Site. A Risk Assessment Addendum was completed in 1998 in support of the OU2 ROD. Human health risks were posed by a future residential use of the Site, including ingestion, inhalation, and dermal contact from surface water, ground water, and soil. Based on the cancer risk levels and hazard indices presented in the risk assessment addendum and the institutional controls subsequently implemented prohibiting the location of a residence or installation of a groundwater well, no unacceptable risk to human health or the environment from exposure to contaminated groundwater exists at the Shaw Avenue Dump site, assuming no on-site well is installed for residential use.

Ecological risks were also evaluated as part of the risk assessment. In the 1991 human health baseline risk assessment, it was determined that there were no critical habitats or endangered species affected by the contamination at the Site and the impact on the Cedar River was minimal. It was identified in the 2015 Five-Year Review, or FYR, that ecological exposures to aquatic receptors in the Cedar River were not adequately characterized in the 1991 human health baseline risk assessment. Data was collected to support a 2017 FYR Addendum that provided the necessary characterization to assess the protectiveness of the remedy for the FYR.

The Site consists of two operable units, each having a separate Record of Decision, or ROD. OU1 addresses the chemical fill and contaminated soil at the Site, and OU2 addresses groundwater contamination.

Selected Remedy

The OU1 ROD was signed on September 26, 1991. Remedy selection was based on the following OU1 ROD Remedial Action Objectives:

- Eliminate or reduce to an acceptable level the risks posed by exposure to the contaminated soil and chemical fill.
- Eliminate or reduce the potential migration of contaminants into groundwater.

Major components of the selected remedy, as described by the ROD, are:

- Fixation/stabilization of chemical fill and contaminated soil;
- Installation of a low-permeability cap to protect the fixated/stabilized material, consisting of either a two-foot clay layer covered by a two-foot fill and vegetated layers, or an eight-inch thick reinforced concrete slab placed over the stabilized waste;
- Implementation of deed restrictions placed upon the landfill property, which would prohibit the construction, installation, maintenance, or use of any wells on the Site for the purposes of extracting water for human drinking, bathing, or swimming purposes, or for the irrigation of food or feed crops, as well as any construction or intrusive activities at the Site;
- Installation of a fence and markers around the capped fill;
- Removal of an underground gasoline tank associated with the Charles City maintenance facility; and
- Groundwater monitoring during and after implementation of the fixation/stabilization remedy to determine the effectiveness of the remedy in preventing leaching of contaminants to groundwater.

The ROD recognized that the full effectiveness of the fixation/stabilization technology employed by the selected remedy would not be known until treatability studies were conducted, and that the possibility existed that the selected technology might not achieve remediation objectives. For this possibility, the ROD selected excavation and off-site removal as the contingency remedy. If needed, the decision to change the remedy from fixation/stabilization to excavation/removal would be explained in an Explanation of Significant Differences, or ESD.

The EPA entered into a Consent Decree on May 26, 1992, with Solvay Animal Health, Inc., and Charles City, Iowa.

Treatability studies yielded unacceptable results, and therefore, an ESD was signed on March 24, 1992, which notified the public of the decision to implement the contingency remedy of excavation and off-site disposal. The ESD identified that ''the only difference from the contingency remedy described in the ROD is that prior to disposal of the chemical fill and contaminated soil at the offsite landfill, the contaminated material will be stabilized/fixated to the best practicable level if the contaminated material were to fail the Toxicity Characteristic Leaching Procedure test.''

The major components of the contingency remedy, as described by the ESD, are:

- Excavation of chemical fill and waste materials exceeding the following levels, or performance standards: Arsenic at 50 parts per million, or ppm and cadmium at 20 ppm;
- Horizontal excavation to extend a minimum of two feet beyond the limit of the chemical fill, subject to modification based upon results of soil sampling conducted in February 1992;

• Confirmation sampling conducted at 14-foot intervals along the perimeter of the excavation;
• Verification testing to assure that the performance standard is met;
• Excavation backfilled with clean fill placed in 12-inch lifts, compacted to a minimum of 90% standard Proctor density, and the upper six inches to be backfilled with clean topsoil over which a vegetated cover will be placed; and
• Excavation and removal of an underground gasoline tank pursuant to Underground Storage Tank regulations.

Requirements for establishing institutional controls, as described in the OU1 ROD remained. The ESD identifies contaminants of potential concern for the chemical fill, surface soil, and subsurface soil.

Response Actions

The OU1 remedial design was approved by the EPA in March 1992, and remedial action, or RA, fieldwork activities were completed on May 15, 1992, when demobilization from the Site occurred. The remedial design and construction of the RA were conducted in accordance with the statement of work provided by the Consent Decree. Implementation of the RA is reported by the Conestoga-Rovers & Associates-authored Remedial Action Report dated October 1993.

Excavation is reported to have extended vertically from the ground surface to the top of bedrock. Excavation depths ranged from approximately 14 feet below ground surface, or bgs, at the excavation's northern extent to about six feet bgs at its southern extent.

A significant portion of the excavation is depicted as being approximately six to eight feet bgs. Field determinations of the extent of chemical fill are reported to have been made based upon its distinctive visual characteristics. Stockpiled topsoil was later characterized as contaminated soil and managed as such, due to having produced a yellowish leachate after precipitation events, which yielded a result of 142 ppm arsenic. The estimated total volume of excavated chemical fill and contaminated soil, based upon excavation cross-section surveys, is 2,220 cubic yards.

Confirmation and verification sampling were conducted at approximate 14-foot intervals along the perimeter of the excavation, as specified in the RA Work Plan, except that discrete samples were used for confirmation analysis as opposed to composite samples. Three discrete samples were collected along the sidewall of the excavation from depths of one-third and two-thirds of the sidewall's height, and at the excavation's base. Each discrete sample was split, and if the analysis confirmed that the performance standard was met, the remains of the split sample were prepared and sent to a different lab for confirmation analysis. Additional excavation was conducted when verification samples did not meet the performance standard.

The EPA Preliminary Close Out Report, documenting construction completion for the Site, was signed on March 30, 2001. The PCOR states that all physical construction associated with the remedy has been completed in accordance with the RODs dated September 28, 2000, and September 26, 1991; the ESD dated March 20, 1992; and the Consent Decree dated May 26, 1992.

Operation and Maintenance

Operation and maintenance of the implemented remedy is occurring as intended. Inspection of the monitoring well network, and the Site in general, is conducted on an annual basis. The inspections address monitoring well access, external/internal conditions of the ground cover at the former chemical fill area, and flood damage, if any. Maintenance recommendations are also identified, as needed. The Site completed the criteria for the Sitewide Ready for Anticipated Use Government Performance and Results Act Measure and EPA Region 7 signed the Superfund Property Reuse Evaluation Checklist for Reporting on July 7, 2006.

The ROD requires implementation of institutional controls in the form of deed restrictions to be placed upon the landfill property. A restrictive covenant was recorded on February 21, 2001, with the Floyd County Recorder of Deeds that satisfies the institutional control provision of the ROD and Consent Decree. Currently, the following individual institutional controls exist at the Site:

• An existing groundwater restrictive covenant in accordance with the 1992 Consent Decree;
• Regulatory restrictions against residential construction because the Site is within the 100-year flood plain of the Cedar River;
• Restrictions on groundwater use because it is within the Charles City limits. City ordinance (City of Charles City Restriction on Groundwater Use, Article 90.03) precludes the use of groundwater for consumption, stating ''all residences and business establishments within the city limits using water for human habitation or occupancy shall connect to the public water system.'' The ordinance also stipulates that ''No new wells shall be drilled and no repairs requiring permits shall be made to a well within an area that is contaminated or that may become contaminated due to contamination in the vicinity of the well site;''
• Regulatory restrictions against changing site use because the Site is included in the registry of hazardous waste or hazardous substance disposal sites under the Iowa Environmental Act. Any use change would require approval from the State of Iowa.

The existing Site-specific institutional controls in combination provide ample limitations of land and groundwater use at the Site. The EPA will continue to review the need for an environmental covenant during the Five-Year Review process.

Five-Year Review

Statutory five-year reviews are required at the Shaw Avenue Dump Superfund Site since hazardous substances remain at the Site above levels that allow for unlimited use and unrestricted exposure. Five-year reviews were completed for the Site in 2005, 2010, and 2015. The 2015 Five-Year Review, or FYR, identified issues and recommendations including the change in toxicity values for polyaromatic hydrocarbons, benzene, xylene, toluene, and 2-nitroaniline and deferred protectiveness until this information could be obtained. The 2015 FYR also identified the potential change in exposure assumptions in the Cedar River and an off-site recreational pond. Required sampling and analysis was completed by the responsible parties to address issues and recommendations from the 2015 FYR, and to support the required FYR addendum.

The 2015 FYR was amended by the EPA under a FYR Addendum in 2017 and found that the remedies at OU1 and OU2 were protective of human health and the environment. The sitewide protectiveness statement is that the sitewide remedy is protective of human health and the environment. The next Five-Year Review report will be completed by August 21, 2020.

Community Involvement

Throughout the process from development of the remedy to completion of the remedial activities, all phases of the Site remediation have been an open process with input from Federal and state regulators, Charles City, and members of the public. Over the life of the project, there have been public comment periods and public meetings to ensure that the local residents were able to contribute to the process and express their opinions.

Public involvement has been included throughout the remediation process at this Site and has been memorialized in operation documents including the Consent Decree, proposed plans, and EPA Five-Year Reviews. Public comments are also solicited during this partial deletion with a notice in the local newspaper, the Charles City Press.

Determination That the Criteria for Deletion Have Been Met

In accordance with 40 CFR 300.425(e), the EPA Region 7 finds that the OU1—Chemical Fill and Contaminated Soil of the Shaw Avenue Dump Superfund Site (the subject of this deletion) meets the substantive criteria for deletion from the NPL. The EPA has consulted with and has the concurrence of the State of Iowa. All responsible parties or other persons have implemented all appropriate response actions required. All appropriate Fund-financed response under CERCLA was implemented, and no further response action by responsible parties is appropriate.

The implemented remedy at the OU1—Chemical Fill and Contaminated Soil has achieved the degree of cleanup specified in the ROD for all pathways of exposure. All selected remedial action objectives and associated cleanup levels are consistent with agency policy and guidance. No further Superfund response is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

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

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 28, 2019.

James Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2019–11542 Filed 6–3–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 107
Tuesday, June 4, 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 COMMERCE

[Docket Number USBC–2019–0001]

Request for Comments on the Cross-Agency Priority Goal: Leveraging Data as a Strategic Asset: Phase 3

AGENCY: Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In March 2018, President Trump launched the President's Management Agenda (PMA). It lays out a long-term vision for modernizing the Federal Government in key areas that will improve the ability of agencies to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people. The PMA established a Cross-Agency Priority (CAP) goal of *Leveraging Data as a Strategic Asset* with an intended purpose of guiding development of a comprehensive long-term Federal Data Strategy (hereinafter ''Strategy'') to grow the economy, increase the effectiveness of the Federal Government, facilitate oversight, and promote transparency (*https://www.performance.gov/CAP/CAP_goal_2.html*). This notice seeks comment on a draft action plan for Federal agencies to adopt in order to achieve the objectives of this CAP goal. This is the third **Federal Register** Notice seeking public comment related to the Federal Data Strategy. The previous two notices sought comments on the Strategy's draft principles and draft practices, respectively.

DATES: Comments on this notice must be received by July 5, 2019.

ADDRESSES: Submit comments through either the Federal eRulemaking Portal or the Strategy website at *https://strategy.data.gov.* Include the Docket ID and the phrase ''Leveraging Data as a Strategic Asset Phase 3 Comments'' at the beginning of your comments. Also indicate which questions described in the **SUPPLEMENTARY INFORMATION** of this notice are addressed in your comments. Comments will not be accepted by fax or paper delivery.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically under Docket ID USBC–2019–0001. Information on using *regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''
- *Privacy Note:* Comments and information submitted in response to this notice may be made available to the public through relevant websites. Therefore, commenters should only include in their comments information that they wish to make publicly available on the internet. Note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public.

FOR FURTHER INFORMATION CONTACT: William Hawk, Economist, U.S. Census Bureau, *william.r.hawk@census.gov* or 301–763–0654.

SUPPLEMENTARY INFORMATION:

Purpose

The Deputy Secretary of the U.S. Department of Commerce, along with the Federal Chief Information Officer, the Chief Statistician of the United States, and executives from the U.S. Small Business Administration and the White House Office of Science and Technology Policy, is charged with developing a comprehensive Federal Data Strategy to achieve the President's Management Agenda CAP goal of *Leveraging Data as a Strategic Asset.* Under this goal, the Federal Government should leverage program, statistical, and mission-support data as a strategic asset to grow the economy, increase the effectiveness of the Federal Government, facilitate oversight, and promote transparency.

The Federal Data Strategy for the U.S. Government establishes a balanced and holistic approach to leveraging data as a strategic asset. The Strategy articulates a vision for the Federal Government to accelerate the use of data to support the foundations of democracy, deliver on mission, serve customers, and steward resources while protecting security, privacy, and confidentiality. Consistent with this vision, Executive Branch agencies will routinely leverage data in support of Federal Government mission priorities to better inform decision-making and improve accountability and will securely share and provide access to data for commercialization, innovation, and public use.

The Strategy consists of three components to guide federal data management and use.

- *Mission Statement:* The mission statement articulates the intent and core purpose of the Strategy.
- *Principles:* The principles serve as motivational guidelines in the areas of *Ethical Governance, Conscious Design,* and *Learning Culture.* The principles include concepts reflected in existing principle frameworks, such as those for the protection of personal information, for the management of information as an asset, for federal statistical agency operations, and for federal evidence building. These principles informed the development of practices and will inform subsequent action steps for the Strategy.
- *Practices:* The practices guide agencies on how to leverage the value of data by *Building a Culture that Values Data and Promotes Public Use; Governing, Managing, and Protecting Data; and Promoting Efficient and Appropriate Data Use.* The practices shall inform the development of subsequent action steps for the Strategy.

Details about the components of the Strategy are available at *https://strategy.data.gov.*

Executive Branch agencies will implement the Strategy in accordance with OMB guidance and by adhering to the requirements of annual Federal Data Strategy Action Plans. These plans will identify a subset of action steps related to practices that are the priority for a given year, along with targeted timeframes for implementation and identified actors. This approach allows for continuous innovation with focused, measured progress, along with opportunities to improve and adapt plans for future actions. OMB may assess agencies on their progress in implementing these practices through the Federal Data Strategy Action Plans and any of its existing oversight and coordination mechanisms.

The 2019–20 Federal Data Strategy Action Plan will be published in 2019.

This **Federal Register** Notice seeks public input on the Draft 2019–20 Federal Data Strategy Action Plan. This is the third of three **Federal Register** Notices seeking public comment related to the Federal Data Strategy. The Department of Commerce published the first of these notices in the **Federal Register** (83 FR 30113) on June 27, 2018. A total of 237 comments were received, with almost 100 comments related to the draft principles. The second notice sought comments on draft practices. It was published in the **Federal Register** (83 FR 52379) on October 17, 2018, and respondents submitted a total of 346 comments. Based on comments received in the first two phases, the data strategy team revised the principles and practices. The revised principles and practices are available at *https://strategy.data.gov.* This notice solicits stakeholder feedback on the Draft 2019–2020 Federal Data Strategy Action Plan.

Request for Comments

The Draft 2019–2020 Federal Data Strategy Action Plan is available at *https://strategy.data.gov* and will be revised and further developed in response to public and agency comments. Comments specific and responsive to the following are requested:

1. Identify additional actions needed to implement the Federal Data Strategy that are not included in the draft Action Plan and explain why.

2. Identify additional actions that would align with or complement ongoing Federal data initiatives or the implementation of new legislation, such as the Foundations for Evidence-based Policy Making Act of 2018 and explain why.

3. Identify any actions in the draft Action Plan that should be considered for omission and explain why.

4. For each action, provide any edits and additional detail to ensure that they accurately and effectively describe needed activities, responsible entities, metrics for assessing progress, and timelines for completion.

5. For each action, provide information about the implementation resources necessary to ensure success of the action steps.

Guidance for Submitting Documents

This guidance for submitting documents is offered to facilitate the analysis and full consideration of the comments. If responding on behalf of an organization or agency, please include the name and address of your institution or affiliation, and your name, title, email addresses, and telephone number. No specific information about you is required, other than that necessary for self-identification, for full consideration of the comment.

Comments should be informative for the Draft 2019–2020 Federal Data Strategy Action Plan. Comments on issues not related to the draft Action Plan will not be considered.

Please submit comments either through the **Federal Register** portal at *www.regulations.gov* or through the Federal Data Strategy website at *https://strategy.data.gov.*

Please specify the number of the question to which your comment applies. If possible, structure your comments on specific actions in the draft Action Plan so that they refer to the number of the relevant action. If you have multiple comments on one action, please organize them together by action number.

If possible, provide comments in a Microsoft Word or plain text file and avoid using footnotes, end notes, images, graphics, or tables. If you refer to reference material (documents, websites, research), please quote or paraphrase the specific content from referenced material.

Dated: April 26, 2019.

Karen Dunn Kelley,

Deputy Secretary of Commerce, Department of Commerce.

[FR Doc. 2019–11597 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[05/10/2019 through 05/16/2019]

Firm name	Firm address	Date accepted for investigation	Product(s)
ARCH Design, Artwork & Framing, Inc.	1188 Walters Way Lane, Saint Louis, MO 63132.	5/10/2019	The firm manufactures framed artwork and mirrors.
Fletcher Wood Products, Inc ...	428 Central Avenue, Fort Dodge, IA 50501.	5/13/2019	The firm manufactures cabinets and countertops.
Global American Sales, Inc	17 Hampshire Drive, Hudson, NH 03051.	5/15/2019	The firm provides computer system design services, including prototyping, customizing, and implementing computer systems.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2019–11554 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Review; Comment Request

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

On February 13, 2019, the Economic Development Administration (EDA) published a 60-day notice in the **Federal Register** with a request for comments on the Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance, and Adjustment Proposals and received a total of eleven comments. Several comments stated that the estimate of burden hours for completing the ED–840P was too low. EDA subsequently conducted a survey and found that the average response was 173 hours, instead of the original estimate of 128.2 hours. The burden estimates provided in this notice represent the adjusted burden estimates.

Agency: Economic Development Administration (EDA), Department of Commerce.

Title: Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance, and Adjustment Proposals.

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Request: Regular submission (revision of a currently approved collection).

Number of Respondents: 300.

Average Hours per Response: 173 hours.

Burden Hours: 25,950 hours.

Needs and Uses: The information collected on Form ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance, and relevant supporting documentation is used to determine whether a firm satisfies the eligibility and programmatic requirements contained in chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341). If certified as eligible for Trade Adjustment Assistance following submission of Form ED–840P, firms must create an EDA-approved Adjustment Proposal in order to receive Trade Adjustment Assistance.

Affected Public: Businesses or other for-profit organizations.

Frequency: During application for Trade Adjustment Assistance.

Respondent's Obligation: Mandatory.

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

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

Sheleen Dumas,

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

[FR Doc. 2019–11518 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–092]

Mattresses From the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that mattresses from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) January 1, 2018, through June 30, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey at (202) 482–0193 or Jonathan Hill at (202) 482–3518, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended

(the Act). Commerce published the notice of initiation of this investigation on October 17, 2018.[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 29, 2019.[2] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. As a result of the partial federal government closure, the revised deadline for the preliminary determination became April 8, 2019. On April 1, 2019, Commerce postponed the preliminary determination of this investigation until May 28, 2019.[3] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and 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 at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] *See Mattresses from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 52386 (October 17, 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.

[3] *See Mattresses from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 84 FR 12198 (April 1, 2019).

[4] *See* Memorandum, ''Mattresses from the People's Republic of China: Decision Memorandum for the Preliminary Determination of Sales at Less Than Fair Value'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Investigation

The products covered by this investigation are mattresses from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record of this investigation, and accompanying discussion and analysis of comments timely received, *see* Scope Decision Memorandum.[7] Based on comments and rebuttal comments received, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772 of the Act. Because China is a non-market economy country within the meaning of section 771(18) of the Act, Commerce has calculated normal value (NV) in accordance with section 773(c) of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity, which includes Aishu; Apex Maritime Xiamen; Beijing Kang Jie Kong; EON Living; Foshan City Deepsung Home Furniture; Foshan Shunde Yong Heng Package Products Co., Ltd.; Gold Gulf International Trade; Guangdong Silique International; Guangdong Silique International GP Win Company; Hangzhou Lintex; Hangzhou Yuchun Home Textile Company; Hangzhou Yudi Hometextile; Hangzhou Samsung Down Products; Honour Lane Shipping; Hubei Lianle Bedding Group Co., Ltd.; Jiangsu Tianma Textile; Jiaxing Yuanchang Furniture Supplier; King Koil; Nantong Mengjini Home Textiles; Ningbo Shida; Relux Mattress Co. Ltd.; Royal HK Bedding; SCM Home Zhejiang; Shenzhen Changding Industries Co. Ltd.; Shanghai Foamemo Furniture; Shenzhen Shenbao Industrial Co Limited; Union Capital Enterprises; Warm Universe Home Products Company; Wong Hau Plastic Works and Trading; Wuxi JHT Textiles; Zhejiang Crafts and Textile; Zhejiang Huaweimei Group Co., Ltd.; and Zhejiang Shiguanghomewaare and Tex. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice,* 83 FR at 52387.

[7] *See* Memorandum, ''Mattresses from the People's Republic of China: Preliminary Scope Decision'' (Scope Decision Memorandum), dated concurrently with this preliminary determination.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist with respect to imports of mattresses from China for the mandatory respondents, Healthcare Co., Ltd. (Healthcare) and Zinus (Xiamen) Inc. (Zinus), but that critical circumstances do exist with respect to all non-individually-examined companies receiving a separate rate and the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, see the Preliminary Affirmative Determination of Critical Circumstances Memorandum and the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[8] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[8] *See Initiation Notice.*

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Healthcare Co., Ltd	Healthcare Co., Ltd	38.56
Zinus (Xiamen) Inc	Zinus (Xiamen) Inc	84.64
Dockter China Limited	Healthcare Co., Ltd	74.65
Dockter China Limited	Huizhou Lemeijia Household Products Co., Ltd. (a.k.a. Better Zs, Ltd.).	74.65
Dockter China Limited	Dongguan Beijianing Household Products Co., Ltd. (a.k.a. Better Zs, Ltd.).	74.65
Foshan Chiland Furniture Co., Ltd	Foshan Chiland Furniture Co., Ltd	74.65
Foshan City Jinxingma Furniture Manufacture Co., Ltd	Foshan City Jinxingma Furniture Manufacture Co., Ltd	74.65
Foshan City Kewei Furniture Co., Ltd	Foshan City Kewei Furniture Co., Ltd	74.65
Foshan EON Technology Industry Co., Ltd	Foshan EON Technology Industry Co., Ltd	74.65
Foshan Mengruo Household Furniture Co., Ltd	Foshan Mengruo Household Furniture Co., Ltd	74.65
Foshan Qisheng Sponge Co., Ltd	Foshan Qisheng Sponge Co., Ltd	74.65
Foshan Ruixin Non Woven Co., Ltd	Foshan Ruixin Non Woven Co., Ltd	74.65
Foshan Ziranbao Furniture Co., Ltd	Foshan Ziranbao Furniture Co., Ltd	74.65
Guangdong Diglant Furniture Industrial Co., Ltd	Guangdong Diglant Furniture Industrial Co., Ltd	74.65
Healthcare Sleep Products Limited	Healthcare Sleep Products Limited	74.65
Hong Kong Gesin Technology Limited	Inno Sports Co., Ltd	74.65
Jiangsu Wellcare Household Articles Co., Ltd	Jiangsu Wellcare Household Articles Co., Ltd	74.65
Jiaxing Taien Springs Co., Ltd	Jiaxing Taien Springs Co., Ltd	74.65
Jiaxing Visco Foam Co., Ltd	Jiaxing Visco Foam Co., Ltd	74.65
Jinlongheng Furniture Co., Ltd	Jinlongheng Furniture Co., Ltd	74.65
Inno Sports Co., Ltd	Inno Sports Co., Ltd	74.65
Luen Tai Global Limited	Luen Tai Global Limited	74.65
Luen Tai Group (China) Limited	Shenzhen L&T Industrial Co., Ltd	74.65
Man Wah Furniture Manufacturing (Hui Zhou) Co., Ltd., Man Wah (MACAO Commercial Offshore), Ltd. and Man Wah (USA), Inc.	Man Wah Household Industry (Huizhou) Co., Ltd	74.65
Ningbo Megafeat Bedding Co., Ltd	Ningbo Megafeat Bedding Co., Ltd	74.65
Ningbo Shuibishen Home Textile Technology Co., Ltd	Ningbo Shuibishen Home Textile Technology Co., Ltd	74.65
Nisco Co., Ltd	Healthcare Co., Ltd	74.65
Quanzhou Hengang Imp. & Exp. Co., Ltd	Quanzhou Hengang Industries Co., Ltd	74.65
Shanghai Glory Home Furnjshings Co., Ltd	Shanghai Glory Home Furnjshings Co., Ltd	74.65
Sinomax Macao Commercial Offshore Limited	Dongguan Sinohome Limited	74.65
Sinomax Macao Commercial Offshore Limited	Sinomax (Zhejiang) Polyurethane Technology Ltd	74.65
Wings Developing Co., Limited	Quanzhou Hengang Industries Co., Ltd	74.65
Xianghe Kaneman Furniture Co., Ltd	Xianghe Kaneman Furniture Co., Ltd	74.65
Xilinmen Furniture Co., Ltd	Xilinmen Furniture Co., Ltd	74.65
Zhejiang Glory Home Furnishings Co., Ltd	Zhejiang Glory Home Furnishings Co., Ltd	74.65
China-wide Entity	China-wide Entity	1.731.75

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the table above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of China producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-country exporters of the subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances do not exist for imports of subject merchandise from Healthcare and Zinus, but that critical circumstances do exist for all non-individually-examined companies receiving a separate rate and the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from the exporter/producer combinations identified above that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

These suspension of liquidation will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination 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).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments, on all issues other than scope issues, may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal case briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10]

Interested parties may address Commerce's preliminary scope determination in scope briefs which may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of the preliminary AD determination in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in scope briefs, may be submitted no later than five days after the deadline date for scope briefs. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit briefs or rebuttal briefs in this investigation 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.

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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On March 29, 2019, pursuant to 19 CFR 351.210(e)(1), Zinus requested that Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make the final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[12]

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 28, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' have a width exceeding 35 inches, a length exceeding 72 inches, and a depth exceeding 3 inches on a nominal basis. Such mattresses are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' have a width exceeding 27 inches, a length exceeding 51 inches, and a depth exceeding 1 inch (crib mattresses have a depth of 6 inches or less from edge to edge) on a nominal basis. Such mattresses are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of actual size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* Letter from Zinus, ''Mattresses from the People's Republic of China: Request for Postponement of Final Determination and Extension of Provisional Measures Period,'' dated March 29, 2019.

[12] *See* 19 CFR 351.210(e).

independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Further, also excluded from the scope of this investigation are any products covered by the existing antidumping duty order on uncovered innerspring units. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009).

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under Harmonized Tariff Schedule for the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–11577 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–846]

Refillable Stainless Steel Kegs From the Federal Republic of Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that refillable stainless steel kegs (kegs) from the Federal Republic of Germany (Germany) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2017, through June 30, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230; telephone: (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this investigation on October 16, 2018.[1] This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). 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.[2] On March 19, 2019, at the request of the petitioner, Commerce postponed the deadline for the preliminary determination until May 28, 2019.[3] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and 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 at *http://enforcement.trade.gov/frn/*.

Scope of the Investigation

The products covered by this investigation are refillable stainless steel kegs from Germany. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] Certain interested parties commented on the scope of this

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Initiation Of Less-Than-Fair-Value Investigations,* 83 FR 52195 (October 16, 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 affected by the partial federal government closure have been extended by 40 days.

[3] *See Refillable Stainless Steel Kegs from the Federal Republic of Germany, Mexico and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 10033 (March 19, 2019).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Refillable Stainless Steel Kegs from the Federal Republic of Germany,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[6] *See Initiation Notice,* 83 FR at 52196.

investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record of this investigation, and a discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] The scope case briefs were due on May 6, 2019, 30 days after the publication of *Kegs from China Preliminary CVD Determination*.[8] There will be no further opportunity for comments on scope-related issues. Commerce is preliminarily modifying the scope language as it appeared in the initiation notice.[9] *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Here, the ''all others'' rate is based on the estimated weighted-average dumping margin calculated for Blefa GmbH (Blefa), the only entity for which Commerce calculated a rate.[10]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Weighted-average dumping margin (percent)
Blefa GmbH	8.61
All Others	8.61

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for Blefa will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is Blefa, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for Blefa; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any 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).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation.[11] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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.

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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a

[7] *See* Memorandum, ''Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 29, 2019 (Preliminary Scope Decision Memorandum) at 4–15.

[8] The scope case briefs were due 30 days after the publication of *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 13634 (April 5, 2019) (*Kegs from China Preliminary CVD Determination*). *See* the Preliminary Scope Decision Memorandum at 5. Because the deadline fell on Sunday, May 5, 2019, the actual deadline for the scope case briefs was Monday, May 6, 2019. *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.''). The deadline for scope rebuttal briefs was Monday, May 13, 2019.

[9] *See* Preliminary Decision Memorandum at 4–5; *see also* Preliminary Scope Decision Memorandum at 15.

[10] *See* section 735(c)(5)(A) of the Act.

[11] Case briefs, other written comments, and rebuttal briefs should not include scope-related issues. *See* ''Scope Comments'' section, *supra.*

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 28, 2019, pursuant to 19 CFR 351.210(e), Blefa requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[13] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 28, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) Vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–11587 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–849]

Refillable Stainless Steel Kegs From Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that refillable stainless steel kegs (kegs) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2017, through June 30, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Allison Hollander at (202) 482–2805 or Minoo Hatten at (202) 482–1690, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this investigation on October 16, 2018.[1] This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). 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.[2] On

[13] *See* Blefa's Letter, ''Refillable Stainless Steel Kegs from the Federal Republic of Germany: Blefa Requests for Extension of Final Determination and Provisional Measures,'' dated April 28, 2019.

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 52195 (October 16, 2016) (*Initiation Notice*).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for

March 19, 2019, at the request of the petitioner, Commerce postponed the deadline for the preliminary determination until May 28. 2019.[3] On May 2, 2019, Commerce preliminarily determined that critical circumstances exist.[4]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and 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 at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The products covered by this investigation are refillable stainless steel kegs from Mexico. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[7] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record of this investigation, and a discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[8] The scope case briefs were due on May 6, 2019, 30 days after the publication of *Kegs from China Preliminary CVD Determination.*[9] There will be no further opportunity for comments on scope-related issues. Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice.*[10] *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a)–(b) of the Act, Commerce has preliminarily used an adverse inference when selecting from among the facts otherwise available for THIELMANN Mexico S.A. de C.V. (THIELMANN), Portinox Mexico S.A. de C.V. (Portinox)[11] and Geodis Wilson Mexico S.A. de C.V. (Geodis Wilson). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Critical Circumstances

On December 10, 2019, the petitioner filed a timely critical circumstances allegation with respect to imports of the subject merchandise from Mexico.

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. On May 2, 2019, we published our preliminary determination that critical circumstances exist with respect to imports of kegs exported from Mexico.[12]

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all-other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for the individually examined respondent under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances is to calculate the ''all-others'' rate as a simple average of the alleged dumping margin(s) from the petition.[13] However, because there was

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 affected by the partial federal government closure have been extended by 40 days.

[3] *See Refillable Stainless Steel Kegs from the Federal Republic of Germany, Mexico and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 10033 (March 19, 2019).

[4] *See Antidumping Duty Investigation on Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Critical Circumstances,* 84 FR 18796 (May 2, 2019) (*Critical Circumstances Determination*).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Refillable Stainless Steel Kegs from Mexico,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[6] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[7] *See Initiation Notice,* 83 FR at 52196.

[8] *See* Memorandum, ''Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 29, 2019 (Preliminary Scope Decision Memorandum).

[9] The scope case briefs were due 30 days after the publication of *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 13634 (April 5, 2019) (*Kegs from China Preliminary CVD Determination*). *See* the Preliminary Scope Decision Memorandum at 5. Because the deadline fell on Sunday, May 5, 2019, the actual deadline for the scope case briefs was Monday, May 6, 2019. *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.''). The deadline for scope rebuttal briefs was Monday, May 13, 2019.

[10] *Id.* at 3–4; *see also* Preliminary Scope Decision Memorandum at 15.

[11] The petitioner stated that Portinox is the former name of THIELMANN. However, because neither Portinox nor THIELMANN responded to our initial questionnaire, we are unable to confirm that Portinox is the former name of THIELMANN. *See* the petitioner's Letter, ''Supplement to the Petition for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Mexico and Germany: Response to the Department's Supplemental Questions,'' dated September 28, 2019, at 3 (Petition Supplement).

[12] *See Critical Circumstances Determination.*

[13] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of*

Continued

only one dumping margin alleged in the Petition pertaining to kegs from Mexico, consistent with its practice, Commerce is preliminarily assigning the dumping margin alleged in the Petition as the ''all-others'' rate to all exporters and producers not individually examined. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Weighted-average margin (percent)
THIELMANN Mexico S.A. de C.V	18.48
Portinox Mexico S.A. de C.V	18.48
Geodis Wilson Mexico S.A. de C.V	18.48
All Others	18.48

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. On May 2, 2019, Commerce preliminarily found that critical circumstances exist for all imports of subject merchandise from Mexico.[14] Therefore, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register** in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied adverse facts available (AFA) to the individually examined company THIELMANN, as well as Portinox and Geodis Wilson in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, there are no calculations to disclose.

Verification

Because THIELMANN did not provide information requested by Commerce, and Commerce preliminarily determines that THIELMANN has been uncooperative within the meaning of section 776(b) of the Act, we will not conduct verification.

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 the preliminary determination. 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 investigation 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.

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.

Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration, and 19 CFR 351.210(e)(1) further provides that Commerce may grant the request, unless Commerce finds compelling reasons to deny the request.

On April 29, 2019, pursuant to 19 CFR 351.210(e), THIELMANN requested that Commerce postpone the final determination and that provisional measures be extended to a period not to

Germany, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also, Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[14] *See Critical Circumstances Determination.*

[15] *See* 19 CFR 351.309; *see also,* 19 CFR 351.303 (for general filing requirements).

exceed six months.[16] However, we find that a compelling reason to deny the request to postpone the final determination exists because THIELMANN declined to respond to our original questionnaire or otherwise participate in the investigation. THIELMANN is the sole mandatory respondent in this case, and because it declined to respond to our initial questionnaire and is not participating in the investigation, there is no need to postpone the final determination, and we are thus compelled to deny the request. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(e)(1) and (2), because a compelling reason for denial exists we are not granting THIELMANN's request to postpone the final determination. Therefore, we intend to issue the final determination pursuant to section 735(a)(1) of the Act and 19 CFR 351.210(b)(1).

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 28, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) Vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–11586 Filed 6–3–19; 8:45 am]

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[16] *See* THIELMANN's Letter, ''Refillable Stainless Steel Kegs from Mexico: Request For Postponement of Final Determination,'' dated April 29, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

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

DATES: Applicable June 1, 2019.

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

SUPPLEMENTARY INFORMATION:

Background

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

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–351–832	731–TA–953	Brazil	Carbon and Certain Alloy, Steel Wire Rod (3rd Review).	Joshua Poole, (202) 482–1293.
C–351–833	701–TA–417	Brazil	Carbon and Certain Alloy, Steel Wire Rod (3rd Review).	Joshua Poole, (202) 482–1293.
A–570–930	731–TA–1144	China	Circular Welded Austenitic, Stainless Pressure Pipe (2nd Review).	Matthew Renkey, (202) 482–2312.
C–570–931	701–TA–454	China	Circular Welded Austenitic, Stainless Pressure Pipe (2nd Review).	Joshua Poole, (202) 482–1293.
A–533–857	731–TA–1215	India	Oil Country Tubular Goods (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
C–533–858	701–TA–499	India	Oil Country Tubular Goods (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–560–815	731–TA–957	Indonesia	Carbon and Certain Alloy, Steel Wire Rod (2nd Review).	Joshua Poole, (202) 482–1293.
A–557–815	731–TA–1210	Malaysia	Welded Stainless Steel, Pressure Pipe (1st Review).	Matthew Renkey, (202) 482–2312.
A–201–830	731–TA–958	Mexico	Carbon and Certain Alloy, Steel Wire Rod (3rd Review).	Joshua Poole, (202) 482–1293.
A–841–805	731–TA–959	Moldova	Carbon and Certain Alloy, Steel Wire Rod (3rd Review).	Joshua Poole, (202) 482–1293.
A–580–870	731–TA–1216	Republic of Korea	Oil Country Tubular Goods (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–821–817	731–TA–991	Russia	Silicon Metal (3rd Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–552–816	731–TA–1212	Vietnam	Welded Stainless Steel, Pressure Pipe (1st Review).	Matthew Renkey, (202) 482–2312.
A–549–830	731–TA–1211	Thailand	Welded Stainless Steel, Pressure Pipe (1st Review).	Matthew Renkey, (202) 482–2312.
A–274–804	731–TA–961	Trinidad And Tobago.	Carbon and Certain Alloy, Steel Wire Rod (3rd Review).	Joshua Poole, (202) 482–1293.
A–489–816	731–TA–1221	Turkey	Oil Country Tubular Goods (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
C–489–817	701–TA–500	Turkey	Oil Country Tubular Goods (1st Review)	Joshua Poole, (202) 482–1293.
A–823–815	731–TA–1222	Ukraine	Oil Country Tubular Goods (1st Review) (Suspension Agreement).	Jacqueline Arrowsmith, (202) 482–5255.

With respect to the antidumping and countervailing duty orders on Oil Country Tubular Goods from India, Vietnam, Republic of Korea and Turkey, we have advanced the initiation date of these Sunset Reviews upon determining that initiation of the Sunset Reviews for these antidumping and countervailing duty orders on the same date would promote administrative efficiency.[1]

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[2]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[3] Parties must use the certification formats provided in 19 CFR 351.303(g).[4] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[5] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[6]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to

[1] With respect to these Sunset Reviews, Commerce is advancing their initiation from August to June 2019 to coincide with the initiation of the companion Sunset Reviews being conducted by the U.S. International Trade Commission, as well as with Commerce's initiation of the Sunset Review for the companion Ukrainian case (A–823–815), which was already scheduled to be initiated on June 2019.

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

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

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

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

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

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

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[7]

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

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

Dated: May 30, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–11655 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold Rolled Steel Flat Products From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results of the Antidumping Duty Investigation

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

SUMMARY: On February 26, 2019, the United States Court of International Trade (the Court) issued final judgment in *Hyundai Steel Company.* v. *United States,* Court No. 16–00228, sustaining the Department of Commerce's (Commerce) final results of the redetermination pursuant to remand. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.,* v *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's Amended Final Results and Antidumping Duty Order published on September 20, 2016 (*Order*). Commerce is amending the final results with respect to the weighted-average dumping margin assigned to Hyundai Steel Company (Hyundai Steel).

DATES: Applicable March 8, 2019.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Daniel Deku, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Final Determination* on July 29, 2016,[1] and issued the antidumping duty order on September 20, 2016.[2] Hyundai Steel filed an action before the CIT to challenge several aspects of Commerce's *Final Determination.*

After review, the Court sustained Commerce's determination that Hyundai Steel failed to demonstrate that the affiliated parties who supplied Hyundai Steel with home market movement, home market warehousing, U.S. international freight, and U.S. inland freight expenses did so on an arm's-length basis.[3] The Court further sustained Commerce's application of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930 (the Act), as amended, to the affiliated parties who provided Hyundai Steel with home market movement, home market warehousing, U.S. international freight, and U.S. inland freight.[4] Additionally, the Court sustained Commerce's application of AFA to three product specifications reported by Hyundai Steel.[5]

However, the Court remanded to Commerce for further explanation or reconsideration whether it intended to apply AFA to those U.S. sales where: (1) Hyundai Steel used an unaffiliated freight provider to supply domestic inland freight; or (2) Hyundai Steel incurred no domestic inland freight charges in the U.S.[6] While the Court found that Commerce appropriately assigned an AFA freight amount to U.S. sales for which Hyundai Steel secured freight services from affiliated parties,[7] the Court found Commerce offered no justification as to why Commerce applied AFA freight amounts to U.S. sales for which Hyundai Steel either: (1) Incurred no domestic inland freight or warehousing expense; or (2) the domestic inland freight or warehousing was provided by unaffiliated parties.[8]

Additionally, the Court determined that the AFA adjustment applied to

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 81 FR 49953 (July 29, 2016) (*Final Determination*).

[2] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*Order*).

[3] *See Hyundai Steel Company* v. *United States,* Slip Op. 18–80 Court No., 16–00228 dated June 28, 2018 (*Remand Order*) at 20–22.

[4] *Id.* at 22–31.

[5] *Id.* at 38–43.

[6] *Id.* at 34.

[7] *Id.* at 22–31.

[8] *Id.* at 34.

Hyundai Steel's U.S. ''Spec C'' sales was not supported by substantial evidence.[9] In the *Final Determination,* as AFA, Commerce selected the highest calculated rate for any other reported sale by Hyundai Steel.[10] The Court sustained the application of an AFA rate on Hyundai Steel's Spec C sales.[11] However, the Court found the U.S. sale associated with the highest calculated rate for Hyundai Steel in the *Final Determination* to be aberrational.[12] The Court noted that the U.S. sale selected as AFA was invoiced in a different manner than other Hyundai Steel sales because of the nature of the product.[13] Based on the foregoing, the Court remanded this matter to Commerce, and directed Commerce to select a AFA margin which was not based on an aberrational sale.[14]

The Court also directed Commerce to reconsider its denial of a CEP offset concerning Hyundai Steel's constructed export price (CEP) sales.[15] The Court noted that Commerce determined that one level of trade (LOT) existed in the home market.[16] The Court also noted that Commerce found Hyundai Steel to have three channels of distribution in the U.S. market: Channel 1 sales (export price (EP) sales through unaffiliated Korean distributors); Channel 2 sales (CEP sales through Hyundai Steel's U.S. affiliates to unaffiliated processors); and Channel 3 sales (CEP sales through Hyundai Steel's U.S. affiliate to unaffiliated and affiliated U.S. processors). Finally, the Court noted that, regarding the LOT in the U.S. market, Commerce found: (1) That Hyundai Steel's Channel 1 and Channel 3 sales were at a more advanced LOT than Channel 2 sales; and (2) that Hyundai Steel's Channel 1 and Channel 3 sales were at the same LOT as its home market sales.[17] The Court determined that Commerce's decision that Hyundai Steel's U.S. CEP sales were at the same LOT as Hyundai's home market sales ''cannot be reconciled'' with Commerce's determination that Hyundai Steel's Channel 2 U.S. sales are at a less advanced LOT than Hyundai Steel's Channel 1 and Channel 3 U.S. sales. Thus, the Court directed Commerce to reconsider this analysis and determination.[18]

Finally, the Court directed Commerce to reconsider whether to correct ministerial errors which Commerce had previously found to have no effect on the margin calculation and, thus, declined to correct in the LTFV investigation.[19] The errors involved: (1) The magnitude by which the AFA rate selected on Hyundai Steel's Spec C sales exceeded the calculated rate set forth in Hyundai Steel's margin calculation; [20] and (2) the application of AFA for certain Hyundai Steel product matching control numbers (CONNUMs).[21]

On October 16, 2018, we filed our *Redetermination.*[22] In our *Redetermination,* we removed our application of AFA for domestic movement expenses for transactions for which either Hyundai Steel did not incur domestic movement expenses or the movement expenses were provided by unrelated parties.[23] We also reanalyzed our application of AFA to Hyundai Steel's ''Spec C'' sales, and assigned a revised FA rate to Hyundai Steel's ''Spec C'' sales based on the instructions of the Court.[24] Additionally we reconsidered Hyundai Steel's claim for a CEP offset based on the instructions of the Court, and continued to determine that no constructed export price (CEP) offset is warranted on Hyundai Steel's U.S. sales.[25] Finally, we have determined that correction of the ministerial errors identified by the Court have no effect on Hyundai Steel's margin calculation.[26]

On February 26, 2019, the Court sustained Commerce's *Redetermination,* and entered final judgment.[27]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the Federal Circuit has held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's February 26, 2019, judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with the Department's *Amended Final Results* and *Order.* This notice is published in fulfillment of the publication requirement of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce amends the *Amended Final Results* of the Order with respect to the dumping margin of Hyundai Steel. The revised cash deposit rates for the LTFV investigation, is as follows:

Exporter	Weighted average dumping margin (percent)
Hyundai Steel Company	28.42

Cash Deposit Requirements

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to collect a cash deposit of 28.42 percent for entries of subject merchandise exported by Hyundai Steel, effective March 8, 2019, in accordance with the *Timken Notice.*

This notice is issued and published in accordance with sections 516(A)(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–11578 Filed 6–3–19; 8:45 am]

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[9] *Id.* at 43–46. ''Spec C'' sales are sales that Hyundai Steel reported as commercial quality, which we determined to be of either drawing or deep drawing quality. *See Final Determination* and accompanying Issues and Decision Memorandum (IDM) at Comment 12.

[10] *See Final Determination* and accompanying IDM at Comment 12.

[11] *See Remand Order* at 39–41.

[12] *Id.* at 43–46.

[13] *Id.* at 45.

[14] *Id.* at 46.

[15] *Id.* at 47–49.

[16] *Id.* at 47–48 (citing *Final Determination* and accompanying IDM at Comment 18).

[17] *Id.* at 48 (citing *Final Determination* and accompanying IDM at Comment 18).

[18] *Id.* at 49 (citing *Final Determination* and accompanying IDM at Comment 18).

[19] *Id.* at 50.

[20] *See* Memorandum, ''Re: Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Allegation of Ministerial Errors in the Final Determination,'' dated August 31, 2016 (Ministerial Error Memorandum) at 2–3.

[21] *Id.* at 6–8.

[22] *See* Final Results of Redetermination Pursuant to Court Remand, Certain Cold-Rolled Steel Flat Products from the Republic of Korea, *Hyundai Steel Company.* v. *United States,* Court No. 16–00228, Slip Op. 18–80 (CIT June 28, 2018), dated October 16, 2018 (*Redetermination*), available at *http://enforcement.trade.gov/remands/index.htm.*

[23] *Id.* at 6–8.

[24] *Id.* at 8–9.

[25] *Id.* at 9–11.

[26] *Id.* at 12.

[27] *See Hyundai Steel Company* v. *United States,* Slip Op. 19–24 Court No., 16–00228 dated February 26, 2019 (*Final Judgement*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–093]

Refillable Stainless Steel Kegs From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that refillable stainless steel kegs (kegs) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2018, through June 30, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this investigation on October 16, 2018.[1] This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). 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.[2] On March 19, 2019, at the request of the petitioner, Commerce postponed the deadline for the preliminary determination until May 28, 2019.[3]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and 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 at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The product covered by this investigation are refillable stainless steel kegs from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and a discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] The scope case briefs were due on May 6, 2019, 30 days after the publication of *Kegs from China Preliminary CVD Determination*.[8] There will be no further opportunity for comments on scope-related issues. Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice*.[9] *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Constructed export prices were calculated in accordance with section 772(b) of the Act. Because China is a non-market economy country within the meaning of section 771(18) of the Act, Commerce calculated normal value (NV) in accordance with section 773(c) of the Act. In addition, pursuant to section 776(a) and (b) of the Act, Commerce preliminarily relied on facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

On May 2, 2019, the petitioner filed a timely critical circumstances allegation with respect to imports of the subject merchandise from China.[10] Section 733(e) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 52195 (October 16, 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 affected by the partial federal government closure have been extended by 40 days.

[3] *See Refillable Stainless Steel Kegs from the Federal Republic of Germany, Mexico and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 10033 (March 19, 2019).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Refillable Stainless Steel Kegs from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[6] *See Initiation Notice,* 83 FR at 52196.

[7] *See* Memorandum, ''Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 29, 2019 (Preliminary Scope Decision Memorandum).

[8] The scope case briefs were due 30 days after the publication of *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 13634 (April 5, 2019) (*Kegs from China Preliminary CVD Determination*). *See* the Preliminary Scope Decision Memorandum at 5. Because the deadline fell on Sunday, May 5, 2019, the actual deadline for the scope case briefs was Monday, May 6, 2019. *See* 19 CFR 351.303(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.''). The deadline for scope rebuttal briefs was Monday, May 13, 2019.

[9] *See* Preliminary Decision Memorandum at 4; *see also* Preliminary Scope Decision Memorandum at 15.

[10] *See* the petitioner's Letter, ''Refillable Stainless Steel Kegs from the People's Republic of China: Petitioner's Critical Cricumstances Allegation,'' dated May 2, 2019.

exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily find that critical circumstances exist with respect to imports of kegs from China for the China-wide entity, but do not exist for Ningbo Master International Trade Co., Ltd., or for the separate rate applicants, Ningbo Haishu Direct Import And Export Trade Co., Ltd., Guangzhou Jingye Machinery Co., Ltd., and Guangzhou Ulix Industrial & Trading Co., Ltd. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[11] we stated that we would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[12] In this investigation, we calculated producer/exporter combination rates for respondents eligible for separate rates.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent *ad valorem*)	Cash deposit rate (adjusted for subsidy offsets) (percent *ad valorem*)
Ningbo Master International Trade Co., Ltd	Ningbo Major Draft Beer Equipment Co., Ltd	2.01	0.00
Guangzhou Jingye Machinery Co., Ltd	Guangzhou Jingye Machinery Co., Ltd	2.01	0.00
Guangzhou Ulix Industrial & Trading Co., Ltd	Guangzhou Jingye Machinery Co., Ltd	2.01	0.00
Ningbo Haishu Direct Import and Export Trade Co., Ltd.	Ningbo Haishu Xiangsheng Metal Products Plant	2.01	0.00
China-Wide Entity		79.71	66.89

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in Appendix I entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. We preliminarily find that critical circumstances exist with respect to imports of kegs from China for the China-wide entity. Therefore, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, by the China-wide entity, for consumption on or after the date which is 90 days before the publication of this notice.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price, as indicated in the chart above as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China -wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China exporter/producer combination (or the China-wide entity) that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce discloses to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation.[13] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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.

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

[11] *See Initiation Notice* at 52200.

[12] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[13] Case briefs, other written comments, and rebuttal briefs should not include scope-related issues. *See* ''Scope Comments'' section, *supra.*

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 24, 2019, pursuant to 19 CFR 351.210(e), Ningbo Master International Trade Co., Ltd., requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will be published no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 28, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

''Unassembled'' or ''unfinished'' refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

(1) Vessels or containers that are not approximately cylindrical in nature (*e.g.,* box, ''hopper'' or ''cone'' shaped vessels);

(2) stainless steel kegs, vessels, or containers that have either a ''ball lock'' valve system or a ''pin lock'' valve system (commonly known as ''Cornelius,'' ''corny'' or ''ball lock'' kegs);

(3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and

(4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930,* as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–11588 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* Letter from Ningbo Master International Trade Co., Ltd., ''Refillable Stainless Steel Kegs from People's Republic of China—Request for Extension of Final Determination and Provisional Measures,'' dated April 24, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–849]

Steel Wire Garment Hangers From Taiwan: Rescission of Antidumping Duty Administrative Review; 2017–2018

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

DATES: Applicable June 4, 2019.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on steel wire garment hangers from Taiwan for the period of review (POR), December 1, 2017, through November 30, 2018.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, 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.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on steel wire garment hangers from Taiwan for the period of December 1, 2017, through November 30, 2018.[1] On December 14, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.213(b), Commerce received a timely request from the petitioner[2] to conduct an administrative review of the antidumping duty order on steel wire garment hangers from Taiwan manufactured and/or exported by Charles Enterprise Co., Ltd.; Gee Ten Enterprise Co., Ltd.; Inmall Enterprises Co., Ltd.; Mindful Life and Coaching Co., Ltd.; Ocean Concept Corporation; Su-Chia International Ltd.; Taiwan Hanger Manufacturing Co., Ltd.; and Young Max Enterprises Co. Ltd.[3]

On March 14, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order for the period December 1, 2017, through November 30, 2018.[4] On May 13, 2019, the petitioners timely withdrew their request for an administrative review for all companies under review.[5]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 62293 (December 3, 2018).

[2] M&B Metal Products Company, Inc.

[3] *See* the petitioner's letter, ''Steel Wire Garment Hangers from Taiwan: Request for Sixth Administrative Review,'' (December 14, 2018).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019).

[5] *See* the petitioner's letter, ''Sixth Administrative Review of Steel Wire Garment Hangers from Taiwan—Petitioner's Withdrawal of Review Request,'' (May 13, 2019).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The petitioner withdrew its request for review within the 90-day deadline. No other party requested an administrative review of the antidumping duty order. Therefore, in response to the timely withdrawal request and in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding the administrative review of the antidumping duty order on steel wire garment hangers from Taiwan in its entirety.

Assessment

Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of steel wire garment hangers from Taiwan during the POR. Antidumping duties shall be assessed at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers, whose entries will be liquidated as a result of this rescission, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 28, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–11576 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–094]

Refillable Stainless Steel Kegs From the People's Republic of China: Preliminary Affirmative Determination, in Part, of Critical Circumstances in the Countervailing Duty Investigation

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

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1395.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2019, the Department of Commerce (Commerce) published the preliminary determination in the countervailing duty (CVD) investigation of imports of refillable stainless steel kegs (kegs) from the People's Republic of China.[1] On May 2, 2019, the American Keg Company LLC (petitioner) alleged that critical circumstances exist with respect to imports of kegs from China, pursuant to sections 703(e) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.[2]

In accordance with 19 CFR 351.206(c)(2)(ii), if the petitioner submits an allegation of critical circumstances later than 20 days before the scheduled date of the preliminary determination, Commerce must issue a

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 13634 (April 5, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Letter from the petitioner, ''Refillable Stainless Steel Kegs from the People's Republic of China: Petitioner's Critical Circumstances Allegation,'' dated May 2, 2019.

preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist within 30 days of the petitioner's allegation.

Section 703(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) ''the alleged countervailable subsidy'' is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization; and (B) there have been massive imports of the subject merchandise over a relatively short period. Sections 351.206(h)(2) and (i) of Commerce's regulations provide that imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive'' and defines a ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.

Critical Circumstances Analysis

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence on the record of this CVD investigation. Specifically, as reflected in the *Preliminary Determination,* Commerce found that Ningbo Master International Trade Co., Ltd. (Ningbo Master), the one participating mandatory respondent in this investigation, benefitted from the following export-contingent subsidies: International Market Expansion Fund and Export Assistance Grants.[3]

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.,* the ''comparison period'').[4] Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[5]

Accordingly, to determine preliminarily whether there has been a massive surge in imports for Ningbo Master International Trade Co., Ltd. (Ningbo Master), the mandatory respondent in this investigation, which provided shipment data, Commerce compared the total volume of shipments from October 2018 through April 2019, the comparison period (*i.e.,* all months for which shipment data was available), with the preceding seven-month period of March 2018 through September 2018, the base period. After analyzing the data submitted, we preliminarily determine imports from Ningbo Master were not massive (*i.e.,* did not increase by more than 15 percent between the base and comparison periods) over a relatively short period of time within the context of 19 CFR 351.206(h).[6]

As detailed in the *Preliminary Determination,* Commerce applied an Adverse Facts Available (AFA) rate for certain companies that did not act to the best of their ability to respond to Commerce's requests for information.[7] Therefore, we preliminarily determine, on the basis of AFA,[8] that there has been a massive surge in imports for these 19 companies that chose not to participate in this investigation. Further, in the *Preliminary Determination,* we preliminarily determined that all 19 companies benefited from export-contingent countervailable subsidies, including the ''International Market Expansion Fund'' and ''Export Assistance Grants'' programs.[9] Therefore, we preliminarily find that these companies received countervailable subsidies that are inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act. As such, we preliminarily determine that critical circumstances exist with respect to these AFA companies only.

To determine whether imports were massive for all other producers/exporters, Commerce's normal practice is to subtract shipments reported by the cooperating mandatory respondents from shipment data of subject merchandise compiled by the ITC.[10] However, as discussed in the *Initiation Notice* [11] for this investigation, the Harmonized Tariff Schedule of the United States (HTSUS) numbers under which the subject merchandise would enter are basket categories containing a wide variety of manufactured steel products unrelated to kegs. Therefore, consistent with prior practice, we have preliminarily relied upon the participating respondent company's data as ''facts available'' in accordance with section 776(a)(1) of the Act to determine whether imports from all other producers/exporters were massive.[12] Based on the import data submitted by Ningbo Master, we have preliminarily determined that imports from all other producers/exporters likewise were not massive.

Final Critical Circumstances Determination

We will issue our final determinations concerning critical circumstances when we issue our final CVD determination. All interested parties will have the opportunity to address this determination. Case briefs, addressing critical circumstances only, may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the publication date of this notice. Rebuttal briefs, limited to issues raised in these critical circumstances-only case briefs, may be

[3] *See e.g.,* Memorandum to the File, ''Countervailing Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Determination Calculations for Ningbo Master International Trade Co., Ltd.,'' dated March 29, 2019.

[4] *See Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances,* 82 FR 19219 (April 27, 2017) at 19220, unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 82 FR 51806 (November 8, 2017) at 51807–08.

[5] *Id.*

[6] *See* Memorandum to the File, ''Countervailing Duty Investigation of Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Determination of Critical Circumstances'' dated concurrently with this notice.

[7] *See* PDM at pages 14–17. Specifically, one mandatory respondent, Penglai Jinfu Stainless Steel Products Co., Ltd., failed to respond to Commerce's questionnaire, and the following 18 companies failed to respond to Commerce's Quantity and Value Questionnaire: Equipmentines (Dalian) E-Commerce Co., Ltd.; Jinan HaoLu Machinery Equipment Co., Ltd.; NDL Keg Qingdao Inc.; Ningbo Direct Import & Export Co., Ltd.; Ningbo Hefeng Container Manufacture Co., Ltd.; Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.; Ningbo HGM Food Machinery Co., Ltd.; Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.; Ningbo Sanfino Import & Export Co., Ltd.; Ningbo Shimaotong International Co., Ltd.; Ningbo Sunburst International Trading Co., Ltd.; Orient Equipment (Taizhou) Co., Ltd.; Qingdao Henka Precision Technology Co., Ltd.; Shandong Tiantai Beer Equipment; Sino Dragon Trading International; Wenzhou Deli Machinery Equipment Co.; Wuxi Taihu Lamps and Lanterns Co., Ltd.; and Yantai Trano New Material Co., Ltd.

[8] *See* section 776 of the Act.

[9] *See* PDM at pages 15–17 and Appendix.

[10] *See, e.g., Antidumping Duty Investigation on Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Critical Circumstances,* 84 FR 18796 (May 2, 2019) at 18798 (*Kegs from Mexico Preliminary Critical Circumstances Determination*).

[11] *See* Memorandum to the File, ''Countervailing Duty Investigation Initiation Checklist: Refillable Stainless Steel Kegs from the People's Republic of China,'' dated October 10, 2018 (Initiation Checklist); *see also Refillable Stainless Steel Kegs from the Peoples Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 52192 (October 16, 2018) (*Initiation Notice*).

[12] *See, e.g., Kegs from Mexico Preliminary Critical Circumstances Determination,* 84 FR at 18798.

submitted no later than five days after the deadline date for case briefs.[13] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs for this critical circumstances finding 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.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of this preliminary determination of critical circumstances.

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for the 19 companies that chose not to participate in this investigation, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse for consumption, on or after January 5, 2019, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established for these companies in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

This determination is issued and published pursuant to section 777(i) of the Act.

Dated: May 28, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–11589 Filed 6–3–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Monday, June 24, 2019, from 2:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. Eastern Daylight Time (EDT) on Thursday, June 20, 2019.

ADDRESSES: The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202–482–5665; email: *devin.horne@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–0775; Fax: 202–482–5665; email: *devin.horne@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background

The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

Topics to be considered: The agenda for the Monday, June 24, 2019, CINTAC meeting is as follows: Discussion of activities related to the U.S. Department of Commerce's Civil Nuclear Trade Initiative.

Members of the public wishing to attend the meeting must notify Mr. Devin Horne at the contact information above by 5:00 p.m. EDT on Thursday, June 20, 2019 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Horne and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Thursday, June 20, 2019. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Thursday, June 20, 2019. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: May 29, 2019.

Devin Horne,

Designated Federal Officer, Office of Energy and Environmental Industries.

[FR Doc. 2019–11515 Filed 6–3–19; 8:45 am]

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[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: On December 20, 2018, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). Based on our analysis of the comments received, we continue to find that subject merchandise has been sold at less than normal value.

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2018, Commerce published the *Preliminary Results* of the administrative review.[1] The period of review is February 1, 2017, through January 31, 2018. We invited interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties.[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] The final results of this administrative review are currently due on May 29, 2019.

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain CTL plate. Imports of CTL plate are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7208.40.30.30, 7208.40.30.60, 7208.51.00.30, 7208.51.00.45, 7208.51.00.60, 7208.52.00.00, 7208.53.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.13.00.00, 7211.14.00.30, 7211.14.00.45, 7211.90.00.00, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00, 7225.40.30.50, 7225.40.70.00, 7225.50.60.00, 7225.99.00.90, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached in the Appendix to this notice. The Issues and 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 B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

Changes Since the Preliminary Results

Based on our analysis of comments received, we made no changes to the margins for the final results of this review.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margins exist for the respondents for the period February 1, 2017, through January 31, 2018.

Producer/exporter	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd	1.43
Hyundai Steel Company	4.19

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For Dongkuk Steel Mill Co., Ltd., and Hyundai Steel Company, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[5] For entries of subject merchandise during the period of review produced by Dongkuk Steel Mill Co., Ltd., or Hyundai Steel Company for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice for all shipments of CTL plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the

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[1] *See Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 83 FR 65348 (December 20, 2018) (*Preliminary Results*).

[2] *See* Nucor Corporation's Case Brief, ''Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Case Brief,'' dated March 4, 2019, and Dongkuk Steel Mill Co., Ltd.'s Rebuttal Brief, ''Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Rebuttal Brief,'' dated March 11, 2019.

[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 were affected by the partial federal government closure and are extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea; 2017–2018,'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[5] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

respondents listed above will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 0.98 percent,[6] the all-others rate determined in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

[6] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32629, 32630 (July 13, 2018).

Dated: May 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum:

[FR Doc. 2019–11600 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845]

Agreement Suspending the Antidumping Duty Investigation on Sugar From Mexico (as Amended); Final Results of 2017 Administrative Review

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

DATES: June 4, 2019.

SUMMARY: For the final results of this review the Department of Commerce (Commerce) continues to find that the selected respondents Ingenio El Higo S.A. de C.V., Ingenio Melchor Ocampo S.A. de C.V., and Zucarmex S.A. de C.V. (and its affiliates) (collectively, Grupo Zucarmex), and Ingenio San Miguel Del Naranjo S.A. de C.V. (and its affiliates) (collectively, Grupo Beta San Miguel), are in compliance with the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement), as amended on June 30, 2017 (collectively, amended AD Agreement), for the period October 1, 2017, through November 30, 2017, and that the amended AD Agreement is meeting the statutory requirements under sections 704(c) and (d) of the Tariff Act of 1930, as amended (the Act).

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2018, Commerce published its *Preliminary Results* of the administrative review of the amended AD Agreement covering the period of review (POR) of October 1, 2017, through November 30, 2017.[1] Commerce gave interested parties an opportunity to comment on the *Preliminary Results.* On March 4, 2019, Commerce received a case brief from the American Sugar Coalition and its Members [2] (collectively, the petitioners).[3] On March 14, 2019, Commerce received a rebuttal brief from Camara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber), Grupo Zucarmex, and Grupo Beta San Miguel (collectively, the respondents).[4] Also on March 15, 2019, Commerce received a rebuttal brief from the Government of Mexico (GOM).[5]

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.[6] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now May 29, 2019.

Scope of Review

Merchandise covered by this amended AD Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025,

[1] *See Preliminary Results of 2017 Administrative Review,* 83 FR 65343 (December 20, 2018) (*Preliminary Results*); *Sugar from Mexico: Suspension of Antidumping Duty Investigation,* 79 FR 78039 (December 29, 2014) (AD Agreement); *Sugar from Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation,* 82 FR 31945 (July 11, 2017) (AD Amendment).

[2] Members of the American Sugar Coalition are as follows: American Sugar Can League; American Sugarbeet Growers Association; American Sugar Refining, Inc.; Florida Sugar Cane League; Rio Grande Valley Sugar Growers, Inc.; Sugar Cane Growers Cooperative of Florida; and the United States Beet Sugar Association.

[3] *See* Petitioners' Case Brief, ''The Administrative Review of the Suspended Antidumping Investigation on Sugar from Mexico,'' dated March 4, 2019 (Petitioners' Case Brief).

[4] *See* Respondents' Rebuttal Brief, ''Sugar from Mexico—Rebuttal Brief,'' dated March 15, 2019 (Respondents' Rebuttal Brief).

[5] *See* GOM's Rebuttal Brief, ''Sugar from Mexico: Rebuttal Brief of the Government of Mexico,'' dated March 15, 2019 (GOM's Rebuttal Brief).

[6] *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.

1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this amended AD Agreement is dispositive.[7]

Analysis

In the *Preliminary Results,* we determined that the respondents selected for individual examination, Grupo Zucarmex and Grupo Beta San Miguel, were in compliance with the amended AD Agreement.

The issues raised in the case briefs and rebuttal briefs are addressed in the Issues and Decision Memorandum and the accompanying business proprietary memorandum.[8] The issues are identified in the Appendix to this notice. The Issues and 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 in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: May 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Issues and Decision Memorandum

I. Summary
II. Scope of the Review
III. Background
IV. Discussion of the Issues
Issue 1: Alleged Violations of the Amended AD Agreement
A. Alleged Violations With Respect to Certain Sales
B. Erroneous Categorizations of Sales
C. Compliance With Mathematical Requirements in the Amended AD Agreement
Issue 2: Enforcement of the Amended AD Agreement

[FR Doc. 2019–11602 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–DS–P

[7] For a complete description of the Scope of the Suspension Agreement, *see* Memorandum from P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations for Enforcement and Compliance: ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended, for the period October 1, 2017, through November 30, 2017, dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[8] *See* Issues and Decision Memorandum; Memorandum from P. Lee Smith entitled ''Summary of Proprietary Information in the Issues and Decisions Memorandum for the Final Results of the Administrative Review for the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended, for the period October 1, 2017, through November 30, 2017.''

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–823, C–552–824]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Antidumping Duty and Countervailing Duty Orders

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 the antidumping duty (AD) and countervailing duty (CVD) orders on laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Drew Jackson (AD order), Celeste Chen (AD order), Thomas Martin (CVD order), or Ariela Garvett (CVD order), AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406, (202) 482–0890, (202) 482–3936, or (202) 482–3609, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on April 11, 2019, Commerce published its affirmative final determination of sales at less-than-fair-value (LTFV) and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of LWS from Vietnam.[1] On May 23, 2019, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of LWS from Vietnam, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[2]

Scope of the Orders

The products covered by these orders are LWS from Vietnam. For a complete description of the scope of the orders, *see* the Appendix to this notice.

AD Order

On May 23, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination 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 imports of LWS from Vietnam that are sold in the United States at LTFV.[3] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this AD order. Because the ITC determined that imports of LWS from Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise from Vietnam, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties, as described below.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border

[1] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value,* 84 FR 14651 (April 11, 2019) (*LTFV Final Determination*); *see also Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,* 84 FR 14647 (April 11, 2019) (*CVD Final Determination*).

[2] *See* Letter to the Honorable Jeffrey Kessler, Assistant Secretary of Commerce for Enforcement and Compliance, from David S. Johanson, Chairman of the U.S. International Trade Commission, regarding antidumping and countervailing duty investigations concerning imports of laminated woven sacks from Vietnam (Investigation Nos. 701–TA–601 and 731–TA–1411 (Final)), dated May 23, 2019 (ITC Notification).

[3] *Id.*

Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the subject merchandise, for all relevant entries of LWS from Vietnam. Antidumping duties will be assessed on unliquidated entries of LWS from Vietnam entered, or withdrawn from warehouse, for consumption on or after October 11, 2018, the date of publication of the *LTFV Preliminary Determination,*[4] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination as further described below.

Suspension of Liquidation—AD

In accordance with section 736 of the Act, Commerce will instruct CBP to reinstitute suspension of liquidation on all relevant entries of LWS from Vietnam, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise. These instructions suspending liquidation will remain in effect until further notice. For each producer and exporter combination, Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates listed below.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as an importer of record would normally deposit estimated duties on the subject merchandise, cash deposits based on the rates listed below.[5] As stated in the *LTFV Final Determination,* Commerce made certain adjustments for export subsidies from the *CVD Final Determination* to the estimated weighted-average dumping margin to determine each of the cash deposit rates.

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
Duong Vinh Hoa Packaging Company Limited	Duong Vinh Hoa Packaging Company Limited	109.46	108.33
C.P. Packaging (Vietnam) Industry Co., Ltd	C.P. Packaging (Vietnam) Industry Co., Ltd	109.46	108.33
Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company.	Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company.	109.46	108.33
TKMB Joint Stock Company	TKMB Joint Stock Company	109.46	108.33
Trung Dong Corporation	Trung Dong Corporation	109.46	108.33
Vietnam-Wide Entity[6]	Vietnam-Wide Entity	292.61	291.48

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of Duong Vinh Hoa Packaging Company Limited, the exporter that accounts for a significant proportion of LWS from Vietnam, we extended the four-month period to six months.[7] Commerce published its *LTFV Preliminary Determination* on October 11, 2018. Therefore, the extended period, beginning on the date of publication of the *LTFV Preliminary Determination,* ended on April 9, 2019. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**.

Therefore, in accordance with section 733(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of LWS from Vietnam entered, or withdrawn from warehouse, for consumption after April 9, 2019, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**.

CVD Order

On May 23, 2019, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of LWS from Vietnam.[8] Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this CVD order. Because the ITC determined that imports of LWS from Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise from Vietnam entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties, as described below.

As a result of the ITC's final determination, in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of LWS from Vietnam entered, or withdrawn from warehouse, for consumption on or after August 13, 2018, the date of publication of the *CVD Preliminary Determination*[9] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication

[4] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 51436 (October 11, 2018) (*LTFV Preliminary Determination*).

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

[6] The Vietnam-wide entity includes Xinsheng Plastic Industry Co., Ltd.

[7] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Postponement of Final Determination of Sales at Less than Fair Value Investigation,* 83 FR 53452 (October 23, 2018).

[8] *See* ITC Notification.

[9] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 39983 (August 13, 2018) (*CVD Preliminary Determination*).

of the ITC's final affirmative injury determination as further described below.

Suspension of Liquidation—CVD

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute suspension of liquidation on all relevant entries of LWS from Vietnam, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[10] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Exporter/producer	Subsidy rate (percent)
Duong Vinh Hoa Packaging Company Limited	3.02
Xinsheng Plastic Industry Co., Ltd	198.87
All-Others	3.02

Provisional Measures—CVD

Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *CVD Preliminary Determination* on August 13, 2018. Therefore, the provisional measures period, beginning on the date of publication of the *CVD Preliminary Determination,* ended on December 11, 2018. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rate listed above will begin on the date of publication of the ITC's final injury determination in the **Federal Register**.

Therefore, in accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of LWS from Vietnam entered, or withdrawn from warehouse, for consumption on or after December 11, 2018, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the AD and CVD orders with respect to LWS from Vietnam pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find an updated list of orders currently in effect by either visiting *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act, and 19 CFR 351.211(b).

Dated: May 28, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders is laminated woven sacks. Laminated woven sacks are bags consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP), polyester (PET), polyethylene (PE), nylon, or any film suitable for printing, or to an exterior ply of paper; printed; displaying, containing, or comprising three or more visible colors (*e.g.,* laminated woven sacks printed with three different shades of blue would be covered by the scope), not including the color of the woven fabric; regardless of the type of printing process used; with or without lining; with or without handles; with or without special closing features (including, but not limited to, closures that are sewn, glued, easy-open (*e.g.,* tape or thread), re-closable (*e.g.,* slider, hook and loop, zipper), hot-welded, adhesive-welded, or press-to-close); whether finished or unfinished (*e.g.,* whether or not closed on one end and whether or not in roll form, including, but not limited to, sheets, lay-flat, or formed in tubes); not exceeding one kilogram in actual weight. Laminated woven sacks produced in the Socialist Republic of Vietnam are subject to the scope regardless of the country of origin of the fabric used to make the sack.

The scope of these orders excludes laminated woven sacks having each of the following physical characteristics: (1) No side greater than 24 inches, (2) weight less than 100 grams, (3) an open top that is neither sealable nor closable, the rim of which is hemmed or sewn around the entire circumference, (4) carry handles sewn on the open end, (5) side gussets, and (6) either a bottom gusset or a square or rectangular bottom. The excluded items with the above-mentioned physical characteristics may be referred to as reusable shopping bags.

Subject laminated woven sacks are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0040 and 6305.33.0080. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including, but not limited to, sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings, including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500,4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2019–11579 Filed 6–3–19; 8:45 am]

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[10] *See* section 706(a)(3) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–846]

Agreement Suspending the Countervailing Duty Investigation on Sugar From Mexico (as Amended); Final Results of 2017 Administrative Review

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

DATES: June 4, 2019.

SUMMARY: For the final results of this review the Department of Commerce (Commerce) continues to find that the Government of Mexico (GOM) and selected respondents Ingenio El Higo S.A. de C.V., Central El Potrero S.A. de C.V., Ingenio Melchor Ocampo S.A. de C.V., and Zucarmex S.A. de C.V. (and their affiliates) are in compliance with the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement), as amended on June 30, 2017 (collectively, amended CVD Agreement), for the

period October 1, 2017, through December 31, 2017, and that the amended CVD Agreement is meeting its statutory requirements under sections 704(c) and (d) of the Tariff Act of 1930, as amended (the Act).

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2018, Commerce published its *Preliminary Results* of the administrative review of the amended CVD Agreement covering the period of review (POR) from October 1, 2017, through December 31, 2017.[1] No parties commented on the *Preliminary Results.* 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.[2] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the Final Results of this review is now May 29, 2019.

Scope of Review

Merchandise covered by this amended CVD Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this amended CVD Agreement is dispositive.[3]

Analysis

In the *Preliminary Results,* we determined that the GOM and selected respondents Ingenio El Higo S.A. de C.V., Central El Potrero S.A. de C.V., Ingenio Melchor Ocampo S.A. de C.V., and Zucarmex S.A. de C.V. (and their affiliates) were in compliance with the amended CVD Agreement. As no parties commented on the *Preliminary Results,* we are adopting the decisions in the Preliminary Decision Memorandum in these final results of review. For additional details, *see* the Preliminary Decision Memorandum, which 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 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 at *http://enforcement.trade.gov/frn.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: May 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–11601 Filed 6–3–19; 8:45 am]

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[1] *See Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (as Amended); Preliminary Results of 2017 Administrative Review* 83 FR 65347 (December 20, 2018) (*Preliminary Results*).

[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.

[3] For a complete description of the Scope of the Suspension Agreement, *see* Memorandum to 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, from P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations, ''Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,'' dated December 14, 2018 (Preliminary Decision Memorandum).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 190312229–9229–01]

Artificial Intelligence Standards

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: The National Institute of Standards and Technology (NIST) extends the period for submitting written comments on the request for information (RFI) entitled ''Artificial Intelligence Standards,'' published on May 1, 2019. The public comment period was originally scheduled to close on May 31, 2019; the public comment period is extended to now close on June 10, 2019. NIST is taking this action to provide additional time to submit comments in response to multiple requests from interested parties to extend the original deadline.

DATES: Comments must be received on or before June 10, 2019 at 5:00 p.m. Eastern Time.

ADDRESSES: Written comments in response to this RFI may be submitted by mail to AI-Standards, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899. Online submissions in electronic form may be sent to *ai_standards@nist.gov.* Submissions may be in any of the following formats: HTML, ASCII, Word, RTF, or PDF. Please cite ''RFI: Developing a Federal AI Standards Engagement Plan'' in all correspondence. All relevant comments received by the deadline will be posted at *https://www.nist.gov/topics/artificial-intelligence/ai-standards* and *regulations.gov* without change or redaction, so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information). Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be posted or considered.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Elham Tabassi, NIST, MS 8900, 100 Bureau Drive, Gaithersburg, MD 20899, telephone (301) 975–5292, email *elham.tabassi@nist.gov.* Please direct media inquiries to NIST's Public Affairs Office at (301) 975–NIST.

SUPPLEMENTARY INFORMATION: On May 1, 2019, NIST published a notice and RFI in the **Federal Register** (84 FR 18490),

about Artificial Intelligence Standards. The notice requested public comments on or before May 31, 2019. Multiple interested parties have requested an extension of the original deadline. In light of these requests, NIST extends the period for submitting public comments to June 10, 2019. Previously submitted comments do not need to be resubmitted.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–11550 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–PR–A001

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Project at Colman Dock in Seattle, Washington

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

ACTION: Proposed incidental harassment authorization (IHA); request for comments.

SUMMARY: NMFS has received a request from the Washington State Department of Transportation (WSDOT) for authorization to take marine mammals incidental to the Seattle Multimodal Project at Colman Dock in Seattle, Washington. 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 1-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 July 5, 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.guan@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: Shane Guan, 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 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' 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 February 7, 2019, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to Seattle Multimodal Project at Colman Dock in Seattle, Washington, from August 1, 2019 to July 31, 2020. After receiving the revised project description and the revised IHA application, NMFS determined that the IHA application is adequate and

complete on May 8, 2018. NMFS is proposing to authorize the take by Level A and Level B harassments of the following marine mammal species: Harbor seal (*Phoca vitulina*); northern elephant seal (*Mirounga angustirostris*); California sea lion (*Zalophus californianus*); Steller sea lion (*Eumetopias jubatus*); killer whale (*Orcinus orca*); long-beaked common dolphin (*Delphinus capensis*), bottlenose dolphin (*Tursiops truncatus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*); harbor porpoise (*Phocoena phocoena*); and Dall's porpoise (*P. dalli*). Neither WSDOT nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover one year of a larger project for which WSDOT obtained prior IHAs (82 FR 21579; July 7, 2017; 83 FR 35226; July 25, 2018) and intends to request take authorization for subsequent facets of the project. The larger 5-year project involves reconfiguring the Colman Dock of the Seattle Ferry Terminal while maintaining the same vehicle holding capacity as current conditions. WSDOT complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section.

Description of Proposed Activity

Overview

The purpose of the Seattle Multimodal Project at Colman Dock is to preserve the transportation function of an aging, deteriorating and seismically deficient facility to continue providing safe and reliable service. The project will also address existing safety concerns related to conflicts between vehicles and pedestrian traffic and operational inefficiencies.

Dates and Duration

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect ESA-listed salmonids, planned WSDOT in-water construction is limited each year to July 16 through February 15. In-water pile driving work will be conducted in daylight hours only. It is expected that a total of 146 pile driving days will be needed for the 2019/2020 construction work.

Specific Geographic Region

The Seattle Ferry Terminal at Colman Dock, serving State Route 519, is located on the downtown Seattle waterfront, in King County, Washington. The terminal services vessels from the Bainbridge Island and Bremerton routes, and is the most heavily used terminal in the Washington State Ferry system. The Seattle terminal is located in Section 6, Township 24 North, Range 4 East, and is adjacent to Elliott Bay, tributary to Puget Sound (Figure 1–2 of the IHA application). Land use in the area is highly urban, and includes business, industrial, the Port of Seattle container loading facility, residential, the Pioneer Square Historic District and local parks.

Detailed Description of Specific Activity

The project will reconfigure the Colman Dock while maintaining approximately the same vehicle holding capacity as current conditions. The construction began in August 2017. In the 2017–2018 season, the construction activities were focused on the South Trestle, Terminal Building Foundation, and the temporary and permanent Passenger Offloading Facility. In the 2018–2019 season, the construction activities were focused on the North Trestle, and Slip 3 bridge seat, overhead loading, wingwall, and inner dolphin.

In the 2019–2020 season, WSDOT plans to work on Slip 2 bridge seat, Center Trestle, Slip 2 wingwall extension, and Slips 2 and 3 inner dolphins. Both impact pile driving and vibratory pile driving and pile removal would be conducted. A total of 58 days are estimated for pile driving and 88 days for pile removal.

In-water construction activities include:

- Permanently install 36-inch (in) steel piles with a vibratory hammer, and then proof with an impact hammer for the last 5–10 feet.
- Permanently install 24-in steel piles with a vibratory hammer.
- Removal of various piles with a vibratory hammer.
- Install and removal of 24-in steel piles with a vibratory hammer.

A list of pile driving and removal activities is provided in Table 1.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING ACTIVITIES

Method	Pile type and size	Total number piles	Number piles/day	Work days
Vibratory drive *	Steel pipe (temp), 24″	148	8	19
Vibratory drive	Steel pipe, 24″	2	2	1
Vibratory drive **	Steel pipe, 36″	148	8	19
Impact drive (proof) **	Steel pipe, 36″	148	8	19
Vibratory removal	Timber, 14″	1,046	20	52
Vibratory removal	Steel pipe, 12″	108	11	10
Vibratory removal	Steel H, 14″	19	10	2
Vibratory removal	Steel pipe, 18″	15	10	2
Vibratory removal *	Steel pipe (temp), 24″	148	8	19
Vibratory removal	Steel pipe, 36″	3	1	3
Total		1,489		146

* Same 24″ steel pipe piles.
** Same 36″ steel pipe piles.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://*

www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in lower Puget Sound area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's 2018 U.S. Pacific Draft Marine Mammal SARs (Carretta *et al.,* 2019). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Carretta *et al.,* 2018); and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

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 Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	26,960	801	138
Family Balaenopteridae:						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	Y	2,900	16.7	>38.6
Minke whale	*Balaenoptera acutorostrata*	California/Oregon/Washington	N	636	3.5	>1.3
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern N. Pacific Southern resident.	Y	77	0.13	0
		West coast transient	N	243	2.4	0
Long-beaked common dolphin.	*Delphinus capensis*	California	N	101,305	657	>35.4
Bottlenose dolphin	*Tursiops truncatus*	California/Oregon/Washington offshore.	N	1,924	198	>0.84
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters	N	11,233	66	7.2
Dall's porpoise	*P. dali*	California/Oregon/Washington	N	25,750	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	N	257,606	14,011	>319
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	N	41,267	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	11,036 [4]	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California breeding	N	179,000	4,882	8.8

[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: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 8 years old, but this is the best available information for use here (Jefferies *et al.,* 2003; Carretta *et al.,* 2017).

All species that could potentially occur in the proposed survey areas are included in Table 2. Although the Southern Resident killer whale (SRKW) could occur in the vicinity of the project area, WSDOT proposes to implement strict monitoring and mitigation measures with assistance from local marine mammal researchers and observers. Thus, the take of this marine mammal stock can be avoided (see details in Proposed Mitigation section).

In addition, the sea otter may be found in Puget Sound area. However, this species is managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

More detailed descriptions of marine mammals in the WSDOT's Seattle Multimodal project area is provided below.

Gray Whale

Within Washington waters, gray whale sightings reported to Cascadia Research and the Whale Museum between 1990 and 1993 totaled over 1,100 (Calambokidis *et al.* 1994b). Abundance estimates calculated for the

small regional area between Oregon and southern Vancouver Island, including the San Juan Area and Puget Sound, suggest there were 137 to 153 individual gray whales from 2001 through 2003 (Calambokidis *et al.* 2004a). Forty-eight individual gray whales were observed in Puget Sound and Hood Canal in 2004 and 2005 (Calambokidis 2007).

Although typically seen during their annual migrations on the outer coast, a regular group of gray whales annually comes into the inland waters at Saratoga Passage and Port Susan (south Whidbey Island area) from March through May to feed on ghost shrimp (Weitkamp *et al.* 1992). The size of the group is 10–12 individuals, with some arriving as early as January and staying into July (Orca Network 2015b). During this time frame they are also seen in the Strait of Juan de Fuca, the San Juan Islands and areas of Puget Sound, although the observations in Puget Sound are highly variable between years (Calambokidis *et al.* 1994b). The average tenure within Washington inland waters is 47 days and the longest stay was 112 days (WSDOT 2019).

The occurrence of gray whale in the WSDOT's Seattle Multimodal project area is rare. There was no sighting of gray whale during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, no gray whale was sighted (WSDOT 2019).

Humpback Whale

Historically, humpback whales were common in inland waters of Puget Sound and the San Juan Islands (Calambokidis *et al.* 2004b). The California-Oregon-Washington stock of humpback whale calves and mates in coastal Hawaii, Mexico and Central America and migrates to southern British Columbia in the summer and fall to feed (NMFS 1991; Marine Mammal Commission 2003; Carretta *et al.* 2007b). Humpback whales are seen in Puget Sound, but more frequent sightings occur in the Strait of Juan de Fuca and near the San Juan Islands. Most sightings are in spring and summer.

Cascadia Research Collective has been studying humpback whales along the U.S. West Coast since 1986. In the early 2000s, increasing numbers of humpback whales were sighted in Washington inland waters, and this trend increased in 2014 (CRC 2017).

The occurrence of humpback whale in the WSDOT's Seattle Multimodal project area is rare. There was no sighting of humpback whale during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, no humpback whale was sighted (WSDOT 2019).

Minke Whale

The California-Oregon-Washington (CA-OR-WA) stock of Minke whale is considered a resident stock (NMFS 2016), and includes Minke whales within the inland Washington waters of Puget Sound and the San Juan Islands.

Information on Minke whale population and abundance is limited due to difficulty in detection. Over a 10-year period, 30 individuals were photo-identified in the U.S./Canada trans-boundary area around the San Juan Islands and demonstrated high site fidelity (Dorsey *et al.* 1990; Calambokidis and Baird 1994).

Minke whales are reported in Washington inland waters year-round, although few are reported in the winter (Calambokidis and Baird 1994). Minke whales are relatively common in the San Juan Islands and Strait of Juan de Fuca (especially around several of the banks in both the central and eastern Strait), but are relatively rare in Puget Sound.

There was no sighting of minke whale during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, no minke whale was sighted (WSDOT 2019).

Killer Whale

The Eastern North Pacific Southern Resident (SRKW) and West Coast Transient stocks of killer whale are both found within Washington inland waters. Individuals of both stocks have long-ranging movements and regularly leave the inland waters (Calambokidis and Baird 1994a).

Southern Resident Killer Whale

Southern Residents are documented in coastal waters ranging from central California to the Queen Charlotte Islands, British Columbia (NMFS 2008a). They occur in all inland marine waters. SRKWs generally spend more time in deeper water and only occasionally enter water less than 15 feet deep (Baird 2000). Distribution is strongly associated with areas of greatest salmon abundance, with heaviest foraging activity occurring over deep open water and in areas characterized by high-relief underwater topography, such as subsurface canyons, seamounts, ridges, and steep slopes (Wiles 2004).

In fall, all three pods occur in areas where migrating salmon are concentrated such as the mouth of the Fraser River. They may also enter areas in Puget Sound where migrating chum and Chinook salmon are concentrated (Osborne 1999). In the winter months, the K and L pods spend progressively less time in inland marine waters and depart for coastal waters in January or February. The pods spend will over 50 percent of the winter months on the outer coast (NMFS 2014). The J pod is most likely to appear year-round near the San Juan Islands, and in the fall/winter, in the lower Puget Sound and in Georgia Strait at the mouth of the Fraser River. In 2017, the Southern Residents spent less time in inland marine waters than previously recorded, which may be related to lack of prey (Orca Network 2017).

On November 29, 2006, NMFS published a final rule designating critical habitat for the SRKR. Both Puget Sound and the San Juan Islands are designated as core areas of critical habitat under the ESA, excluding areas less than 20 feet deep relative to extreme high water (71 FR 69054).

The Southern Residents live in three pod groups known as the J, K and L pods. As of January 2019, the stock collectively numbered 75 individuals (J Pod: 22, K Pod: 18, L Pod: 35) (Orca Network 2019), though the NMFS latest SAR estimates the population to be 77.

There was no sighting of Southern Resident killer whale during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, 148 SRKW (multiple sightings of some members of the population) were observed in the project area, with an average of 1.5/day (WSDOT 2019).

West Coast Transient Killer Whale

The West Coast Transient stock occurs in California, Oregon, Washington, British Columbia, and southeastern Alaskan waters. Within the inland waters, they may frequent areas near seal rookeries when pups are weaned (Baird and Dill 1995). West Coast Transients are documented year-round in Washington inland waters.

Transient killer whales generally occur in smaller (less than 10 individuals), less structured pods, though pods as large as 12 have occasionally been observed in Puget

Sound. According to the Center for Whale Research (CWR 2015), they tend to travel in small groups of one to five individuals, staying close to shorelines, often near seal rookeries when pups are being weaned. Transient sightings have become more common since the mid-2000s (WSDOT 2019). Unlike the SRKW pods, Transients may be present in the area for hours as they hunt pinnipeds. There was no sighting of Transient killer whale during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, 19 Transients were observed in the project area, an average of 0.09/day (WSDOT 2019).

Long-Beaked Common Dolphin and Bottlenose Dolphin

The California stock of Long-beaked common dolphins are present off the California coast. The California-Oregon-Washington stock of bottlenose dolphins are found off the coasts of California, Oregon, and Washington, though they are more prevalent off the California coast (NMFS 2017).

The occurrence of these two dolphin species in the WSDOT's Seattle Multimodal project area is rare. There was no sighting of common and bottlenose dolphins during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, 2 common dolphins (an average of 0.02/day) and 4 bottlenose dolphins (an average of 0.04/day) were observed in the project area (WSDOT 2019).

Harbor Porpoise

Harbor porpoises are common in the Strait of Juan de Fuca and south into Admiralty Inlet, especially during the winter, and are becoming more common south of Admiralty Inlet. Little information exists on harbor porpoise movements and stock structure near the Seattle area, although it is suspected that in some areas harbor porpoises migrate (based on seasonal shifts in distribution). Hall (2004) found harbor porpoises off Canada's southern Vancouver Island to peak during late summer, while the Washington State Department of Fish and Wildlife's (WDFW) Puget Sound Ambient Monitoring Program (PSAMP) data show peaks in Washington waters to occur during the winter. Hall (2004) found that the frequency of sighting of harbor porpoises decreased with increasing depth beyond 150 m with the highest numbers observed at water depths ranging from 61 to 100 m. Although harbor porpoises have been spotted in deep water, they tend to remain in shallower shelf waters (<150 m) where they are most often observed in small groups of one to eight animals (Baird 2003). Water depths within the Seattle Multimodal project area range from 0 to 186 m/611 ft., with the majority of the waters less than 150 m deep.

There was no sighting of harbor porpoise during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, 288 harbor porpoise were observed in the project area, an average of 3/day (WSDOT 2019).

Dall's Porpoise

Dall's porpoises are migratory and appear to have predictable seasonal movements driven by changes in oceanographic conditions (Green *et al.,* 1993), and are most abundant in Puget Sound during the winter (Nysewander *et al.,* 2005; WDFW 2008). Despite their migrations, Dall's porpoises occur in all areas of inland Washington at all times of year (WSDOT), but with different distributions throughout Puget Sound from winter to summer. The average winter group size is three animals (WDFW 2008).

The occurrence of these Dall's porpoise in the WSDOT's Seattle Multimodal project area is rare. There was no sighting of Dall's porpoise during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, no Dall's porpoise was observed in the project area (WSDOT 2019).

California Sea Lion

California sea lions breed on islands off Baja Mexico and southern California, with males (primarily) migrating north to feed in the northern waters (Everitt *et al.,* 1980). Females remain in the waters near their breeding rookeries. All age classes of males are seasonally present in Washington waters (WDFW 2000).

California sea lions were unknown in Puget Sound until approximately 1979 (Steiger and Calambokidis 1986). Everitt *et al.* (1980) reported the initial occurrence of large numbers at Port Gardner, Everett (northern Puget Sound) in the spring of 1979. The number of California sea lions using the Everett haulout numbered around 1,000. This haulout remains the largest in the state for sea lions in general and for California sea lions specifically (WSDOT 2019). Similar sightings and increases in numbers were documented throughout the region after the initial sighting in 1979 (Steiger and Calambokidis 1986), including urbanized areas such as Elliott Bay (Seattle) and heavily used areas of central Puget Sound (Gearin *et al.,* 1986).

California sea lions do not avoid areas with heavy or frequent human activity, but rather may approach certain areas to investigate. This species typically does not flush from a buoy or haulout if approached. In Washington, California sea lions use haulout sites within all inland water regions (WDFW 2000). The movement of California sea lions into Puget Sound could be an expansion in range of a growing population (Steiger and Calambokidis 1986).

The nearest documented California sea lion haulout sites are 3 km/2 miles southwest of the Seattle Ferry Terminal, although sea lions also make use of docks and other buoys in the area.

During the 2012 Seattle Slip 2 Batter Pile project, 15 California sea lions were observed during this 1-day project (WSDOT 2012). During the 2016 Seattle Test Pile project, 12 California sea lions were observed over 10 days in the project area, with the maximum number sighted in a single day being 4 (WSDOT 2016). During the 99 monitoring days of the 2017/18 Seattle Multimodal Project, 1,047 California sea lions were observed in the project area, an average of 11/day (WSDOT 2019).

Steller Sea Lion

Adult Eastern U.S. stock Steller sea lions congregate at rookeries in Oregon, California, and British Columbia for pupping and breeding from late May to early June (Gisiner 1985). Steller sea lion abundances vary seasonally in Washington inland water, with a minimum estimate of 1,000 to 2,000 individuals present or passing through the Strait of Juan de Fuca in fall and winter months (WSDOT 2019). The number of haulout sites has increased in recent years. The nearest documented Steller sea lion haulout sites are 15 km/9 miles southwest of the Seattle Ferry Terminal.

There was no sighting of Steller sea lion during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in

2017/2018 season, 54 Steller sea lions were observed in the project area, an average of 0.6/day (WSDOT 2019).

Harbor Seal

Harbor seals are the most numerous marine mammal species in Puget Sound. Harbor seals are non-migratory; their local movements are associated with such factors as tides, weather, season, food availability and reproduction (Scheffer and Slipp 1944; Fisher 1952; Bigg 1969, 1981).

They are not known to make extensive pelagic migrations, although some long-distance movements of tagged animals in Alaska (108 miles) and along the U.S. west coast (up to 342 miles) have been recorded (Pitcher and McAllister 1981; Brown and Mate 1983; Herder 1983).

Harbor seals haul out on rocks, reefs and beaches and feed in marine, estuarine and occasionally fresh waters. Harbor seals display strong fidelity for haulout sites (Pitcher and Calkins 1979; Pitcher and McAllister 1981).

The nearest documented harbor seal haulout to the Seattle Ferry Terminal is 10.6 km/6.6 miles west on Blakely Rocks (outside of the project Level B harassment zone), though harbor seals also make use of docks, buoys and beaches in the area. The level of use of this haulout during the fall and winter is unknown, but is expected to be much less as air temperatures become colder than water temperatures, which results in seals in general hauling out less (WSDOT 2019). Harbor seals are known to haul out on docks and beaches throughout the project area.

During the 2012 Seattle Slip 2 Batter Pile project, 6 harbor seals were observed during this one day project (WSDOT 2012). During the 2016 Seattle Test Pile project, 56 harbor seals were observed over 10 days in the project area, with the maximum number sighted in a single day being 13 (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in the 2017/2018 season, 813 harbor seals were observed in the project area, an average of 8/day (WSDOT 2019).

Northern Elephant Seal

Northern Elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands, from December to March. Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south. Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons (NMFS 2015a).

The closest documented Northern Elephant seal haulout is Protection Island (88.5 shoreline km/55 shoreline miles northwest of the Seattle Ferry Terminal) (WDFW 2000). Northern Elephant seals also use area beaches as haulouts, such as a female elephant seal who has been coming to a south Whidbey Island beach to rest while molting each spring for several years, and recently gave birth to a pup (Orca Network 2015a).

The occurrence of these northern elephant seal in the WSDOT's Seattle Multimodal project area is rare. There was no sighting of northern elephant seal during the 1-day 2012 Seattle Slip 2 Batter Pile project (WSDOT 2012) or the 10-day 2016 Seattle Test Pile project (WSDOT 2016). During the 99-day marine mammal monitoring of the previous Seattle Multimodal Project in 2017/2018 season, no elephant seal was observed in the project area (WSDOT 2019).

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. Twelve marine mammal species (eight cetacean and four pinniped (two otariid and two phocid) species) have the reasonable potential to co-occur with the proposed construction activities. Please refer to

Table 2. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), three are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor and Dall's porpoises).

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.

Potential impacts to marine mammals from the proposed Seattle Multimodal project at Colman Dock are from noise generated during in-water pile driving and pile removal activities.

Acoustic Effects

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

The WSDOT's Seattle Multimodal project using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift (TS)—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of TS just after exposure is the initial TS. If the TS eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (TTS) (Southall *et al.,* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced TS. An animal can experience TTS or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran, 2015). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of root mean square (rms) SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (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 occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, 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 one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual

levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand, 2009). For WSDOT's dolphin relocation project, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Puget Sound.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as 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 noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 µPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 µPa (rms) for continuous noises (such as vibratory pile driving). For the WSDOT's Seattle Multimodal Project at Colman Ferry Terminal, both 120-dB and 160-dB levels are considered for effects analysis because WSDOT plans to use both impact pile driving and vibratory pile driving and pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound (such as noise from impact pile driving) rather than continuous signals (such as noise from vibratory pile driving) (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction, only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on marine mammals' prey availability in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

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 noise generated from in-water pile driving 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 phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids, and because these species are much smaller than mysticetes, thus they present challenges in implementing monitoring and mitigation measures. Auditory injury is unlikely to occur for low- and mid-frequency cetacean species and otariids. 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.

WSDOT's proposed activity includes the use vibratory hammer, which generates non-impulse noises, and impact hammer, which generates impulse noises. Therefore, the 120 and 160 dB re 1 μPa (rms) 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) (Technical Guidance, 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). WSDOT's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and pile removal) 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—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB	$L_{rms,flat}$: 160 dB ...	$L_{rms,flat}$: 120 dB
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB.	$L_{E,MF,24h}$: 198 dB.		
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB.	$L_{E,HF,24h}$: 173 dB.		
Phocid Pinnipeds (PW) (Underwater).	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	$L_{E,PW,24h}$: 201 dB.		
Otariid Pinnipeds (OW) (Underwater).	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB.	$L_{E,OW,24h}$: 219 dB.		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (Lpk) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Source Levels

The source level for vibratory pile driving and removal of the 18- and 24-in steel pile is based on vibratory pile driving of the 30-in steel pile at Port Townsend. The unweighted SPL_{rms} source level at 10 m from the pile is 174 dB re 1 re 1 μPa.

The source level for vibratory pile driving of the 36-in steel piles is based on vibratory test pile driving of 36-in steel piles at Port Townsend in 2010. Recordings of vibratory pile driving were made at a distance of 10 m from the pile. The results show that the unweighted SPL_{rms} for vibratory pile driving of 36-in steel pile was 177 dB re 1 μPa.

The source level for impact pile driving of the 36-in steel pile is based on the sound source verification (SSV) measurements at Colman Dock in 2018. The source levels reported are: 174 dB re 1 μPa^2-s for SEL_{ss}, 188 dB re 1 μPa for SPL_{rms}, and 206 dB re 1 μPa for SPL_{pk}. These levels were recorded with the use of bubble curtains for noise attenuation. Since WSDOT plans to use bubble curtain for all impact pile driving, NMFS considers these measurements are appropriate for impact zone calculation.

The source level for vibratory pile removal of 14-in timber pile is based measurements conducted at the Port Townsend Ferry Terminal during vibratory removal of a 12-inch timber pile by WSDOT. The recorded source level is 152 dB_{rms} re 1 μPa at 16 m from the pile, with an adjusted source level of 155 dB_{rms} re 1 μPa at 10 m.

The source levels for vibratory pile removal of 12-in steel and 14-in steel H piles are based on vibratory pile driving of 12-in steel pipe pile measured by CALTRANS. The unweighted source level is 155 dB_{rms} re 1 μPa at 10 m.

A summary of source levels is presented in Table 5.

TABLE 5—SUMMARY OF SOURCE LEVELS FOR THE SEATTLE MULTIMODAL PROJECT AT COLMAN (YEAR 3)

Method	Pile type/size (inch)	SEL, dB re 1 μPa²-s	SPL_{rms}, dB re 1 μPa	SPL_{pk}, dB re 1 μPa
Vibratory driving/removal	Steel, 18- and 24″	174	174	
Vibratory driving/removal	Steel, 36″	177	177	
Impact pile driving (proof)	Steel, 36″	174	188	206
Vibratory removal	Timber, 14″	155	155	
Vibratory removal	Steel, 12″	155	155	
Vibratory removal	Steel H, 14″	155	155	

These source levels are used to compute the Level A injury zones and to estimate the Level B harassment zones.

Estimating Harassment Zones

All distances to the Level B harassment zone except for 18-, 24-, and 36-in vibratory pile driving are based on the above source levels applying practical spreading loss, *i.e.,* 15*log(R), where R is the distance from the pile to where Level B harassment levels are. For vibratory pile driving and pile removal, the Level B harassment level is 120 dB re 1 μPa; for impact pile driving, the Level B harassment level is 160 dB re 1 μPa.

For Level B harassment ensonified areas for vibratory pile driving and removal of the 18-in, 24-in, and 36-in steel piles, the distance is based on measurements conducted during the year 1 Seattle multimodal project at Colman. The result showed that pile driving noise of two 36-in steel piles being concurrently driven was no longer detectable at a range of 5.4 miles (8.69 km). Therefore, the distance of 8,690 m is selected as the Level B harassment distance for vibratory pile driving and removal of the 18-in, 24-in, and 36-in steel piles.

For Level A harassment zones, since the peak source levels for both pile driving are below the injury thresholds, cumulative SEL were used to do the calculations using the NMFS acoustic guidance (NMFS 2018).

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of 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 in-water pile driving), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. When calculate Level A harassment distances using NMFS' User Spreadsheet, input parameters pile driving or removal duration (for vibratory hammer) or number of strikes (for impact hammer) of each pile and the number of piles installed or removed per day.

Distances of ensonified area for different pile driving/removal activities for different marine mammal hearing groups is present in Table 6.

TABLE 6—DISTANCES TO HARASSMENT ZONES AND AREA

Pile type, size & pile driving method	Injury zone (m)/Area (km²)					Level B ZOI (m)/Area (km²)
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid	Otariid	
Vibratory drive/removal, 24″ steel piles, 8 piles/day, 20 min/pile	96.7/0.029	8.6/0.000	143.0/0.064	58.8/0.011	4.1/0.000	8,690/74.291
Vibratory drive 24″ steel pile, 2 piles/day, 20 min/pile	38.3/0.005	3.4/0.000	56.7/0.010	23.3/0.002	1.6/0.000	8,690/74.291
Vibratory drive 36″ steel pile, 8 piles/day, 20 min/pile	153.3/0.074	13.6/0.001	226.6/0.161	93.2/0.027	6.5/0.000	8,960/74.291
Impact drive (proof) 36″ steel pile, 8 piles/day, 200 strikes/pile	343.2/0.370	12.2/0.000	408.7/0.524	183.6/0.106	13.4/0.000	736/1.701
Vibratory remove 14″ timber pile, 20 piles/day, 15 min/pile	8.0/0.000	0.7/0.000	11.8/0.000	4.8/0.000	0.3/0.000	2,175/14.854
Vibratory remove 12″ steel pile, 11 piles/day, 20 min/pile	6.5/0.000	0.6/0.000	9.6/0.000	3.9/0.000	0.3/0.000	2,175/14.854
Vibratory remove 14″ steel H pile, 10 piles/day, 20 min/pile	6.1/0.000	0.5/0.000	9.0/0.000	3.7/0.000	0.3/0.000	2,175/14.854
Vibratory removal 18″ steel pile, 10 piles/day, 20 min/pile	112.1/0.039	9.9/0.000	165.8/0.086	68.1/0.015	4.8/0.000	8,960/74.291
Vibratory removal 36″ steel pile, 1 pile/day, 20 min/pile	38.3/0.005	3.4/0.000	56.6/0.010	23.3/0.002	1.6/0.000	8,960/74.291

Marine Mammal Occurrence and Take Estimates

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Marine mammal take calculation are based on marine mammal monitoring during the 2017/2018 season Seattle Multimodal project at Colman Dock when observation data are available, then adjusted to account for possible missed observations. These species are harbor seal, California sea lion, Steller sea lion, and harbor porpoise.

For marine mammals that were not observed, density data from the U.S. Navy Marine Species Density Report were used for take calculation.

For bottlenose dolphin and long-beaked common dolphin, no density estimate is available. Therefore, take numbers for these two species are based on prior anecdotal observations and strandings in the action area.

A summary of marine mammal abundance and density is provided in Table 7.

TABLE 7—MARINE MAMMAL ABUNDANCE AND/OR DENSITY USED FOR TAKE CALCULATION

[Numbers in parenthesis indicate adjustments made to account for possible missed observations]

Species	Abundance based on observation at WSDOT Seattle Multimodal project (animals/day)	Navy Marine Species Density Report (animals/km^2)
Humpback whale	.....	0.0007
Minke whale	.....	0.00003
Gray whale	.....	0.00051
Killer whale (west coast transient)	.....	0.002
Harbor porpoise	3	.....
Dall's porpoise	.....	0.048
Harbor seal	8 (11)	.....
Northern elephant seal	.....	0.00001
California sea lion	11 (14)	.....
Steller sea lion	0.6 (1.2)	.....

For marine mammals with observation data during WSDOT's 2017/2018 Seattle Multimodal project, take numbers were calculated as:

Total Take = animal abundance × pile driving days

To determine the portion of total take that would result from Level A harassment, the proportion of Level A and Level B harassment was used to apportion the total takes. Furthermore, an additional 20 takes of harbor seals by Level A harassment is added to account for the higher numbers historically sighted during monitoring and the smaller shutdown zones (see below).

For marine mammals that were not observed during the 2017/2018 season but with known densities in the general area (*i.e.,* gray, humpback, and minke whales and Dall's porpoise), take numbers were calculated as:

Take = ensonified area (Level A or Level B) × animal density × pile driving days

For long-beaked common dolphin and bottlenose dolphin, an average of 7 animals per group is determined based on sighting data from Cascadia Research (CRC 2012, 2017). Assuming that an average of one group could be encountered per month in the project area, a total of 49 takes of each species is assessed for the duration of 7 months in-water work window.

For calculated take number less than 15, such as northern elephant seals, transient killer whales, humpback whales, gray whales, and minke whales, Level B take numbers were adjusted to account for group size and the likelihood of encountering. Specifically, for northern elephant seal, take of 15 animals is estimated based on the likelihood of encountering this species during the project period. For transient killer whale, take of 30 animals is estimated based on the group size and the likelihood of encountering in the area. For gray, humpback, and minke whale, 30, 30, and 10 animals each area estimated, respectively.

WSDOT will implement strict monitoring and mitigation measures and to suspend pile driving activities when SRKWs are detected in the vicinity of the action to avoid takes of this population.

A summary of marine mammal take numbers is provided in Table 8.

TABLE 8—ESTIMATED TAKE NUMBERS

Species	Estimated Level A take	Estimated Level B take	Estimated total take	Percent population
Gray whale	0	30	30	0.11
Humpback whale	0	30	30	1.03
Minke whale	0	10	10	1.57
Killer whale, transient	0	30	30	12.35
Harbor porpoise	103	335	438	3.90
Dall's porpoise	71	200	271	1.05
Long-beaked common dolphin	0	49	49	0.05
Bottlenose dolphin	0	49	49	2.55
California sea lion	0	2044	2044	0.79
Steller sea lion	0	175	175	0.42
Pacific harbor seal	114	1492	1606	14.55
Northern elephant seal	0	15	15	0.01

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.

Specific mitigation measures are proposed as follows.

1. Time Restriction.

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

2. Establishing and Monitoring Level A, Level B Harassment Zones, and Shutdown Zones.

WSDOT shall establish shutdown zones that encompass the distances within which marine mammals could be taken by Level A harassment (see Table 7 above) except for harbor seal. For Level A harassment zones that is less than 10 m from the source, a minimum of 10 m distance should be established as a shutdown zone. For harbor seal, a maximum of 60 m shutdown zone would be implemented if the actual Level A harassment zone exceeds 60 m. This is because there are a few habituated harbor seals that repeated occur within the larger Level A zone, which makes implementing a shutdown zone larger than 60 m infeasible.

A summary of exclusion zones is provided in Table 9.

TABLE 9—SHUTDOWN ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS

Pile type, size & pile driving method	Shutdown zone (m)				
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid	Otariid
Vibratory drive/removal, 24″ steel piles, 8 piles/day	100	10	150	60	10
Vibratory drive 24″ steel pile, 2 piles/day; or vibratory removal 36″ steel pile, 1 pile/day	40	10	60	25	10
Vibratory drive 36″ steel pile, 8 piles/day	160	15	230	60	10
Impact drive (proof) 36″ steel pile, 8 piles/day	350	15	410	60	15
Vibratory remove 14″ timber pile, 20 piles/day; or vibratory removal 12″ steel pile, 11 piles/day; or vibratory removal 14″ steel pile, 10 piles/day	10	10	15	10	10
Vibratory removal 18″ steel pile, 10 piles/day, 20 min/pile	120	10	170	60	10

WSDOT shall also establish a Zone of Influence (ZOI) based on the Level B harassment zones for take monitoring where received underwater SPLs are higher than 160 dB_{rms} re 1 µPa for impulsive noise sources (impact pile driving) and 120 dB_{rms} re 1 µPa for non-impulsive noise sources (vibratory pile driving and pile removal).

NMFS-approved protected species observers (PSO) shall conduct an initial 30-minute survey of the exclusion zones to ensure that no marine mammals are seen within the zones before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 30 minutes have elapsed since the last sighting.

3. Soft-start.

A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the impact pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without impact pile driving, the contractor will initiate the driving with ramp-up procedures described below.

Soft start for impact hammers requires contractors to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, WSDOT will use the soft-start technique at the beginning of impact pile driving, or if pile driving has ceased for more than 30 minutes.

4. Shutdown Measures.

WSDOT shall implement shutdown measures if a marine mammal is detected within an exclusion zone or is about to enter an exclusion zone listed in Tables 8.

WSDOT shall also implement shutdown measures if SRKWs are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure.

If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving or pile removal shall be suspended until the whale exits the Level B harassment zone to avoid further level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA and if such marine mammals are sighted

within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

5. Coordination with Local Marine Mammal Research Network.

Prior to the start of pile driving for the day, the Orca Network and/or Center for Whale Research will be contacted by WSDOT to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the United States and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile driving.

Based on our evaluation of the required measures, NMFS has preliminarily determined that the prescribed 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); and
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its dolphin relocation project at Bremerton and Edmonds ferry terminals. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from WSDOT's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer CVs.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of ZOI from different pile types, three different ZOIs and different monitoring protocols corresponding to a specific pile type will be established.

- For Level B harassment zones with radii less than 1,000 m, 3 PSOs will be monitoring from land.
- For Level B harassment zones with radii larger than 1,000 m but smaller than 2,500 m, 4 PSOs will be monitoring from land.
- For Level B harassment zones with radii larger than 2,500 m, 4 PSOs will be monitoring from land with an additional 1 PSO monitoring from a ferry.

6. PSOs shall collect the following information during marine mammal monitoring:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting:
  - Species, numbers, and, if possible, sex and age class of marine mammals;
  - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
  - Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point; and
  - Estimated amount of time that the animals remained in the Level B zone;
- Description of implementation of mitigation measures within each

monitoring period (*e.g.,* shutdown or delay); and

- Other human activity in the area within each monitoring period.

To verify the required monitoring distance, the exclusion zones and Level B harassment zones will be determined by using a range finder or hand-held global positioning system device.

WSDOT will conduct noise field measurement to determine the actual Level B harassment distance from the source during vibratory pile driving. If the actual Level B harassment distance is less than modelled, the number of PSOs will be adjusted based on the criteria listed above.

Reporting Measures

WSDOT is required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. In the case if WSDOT intends to renew the IHA (if issued) in a subsequent year, a monitoring report should be submitted 60 days before the expiration of the current IHA (if issued). This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

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).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 8, given that the anticipated effects of WSDOT's Seattle Multimodal at Colman Dock project involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although some marine mammals could experience, and are authorized for Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day (114 harbor seals, 103 harbor porpoises, and 71 Dall's porpoise), the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz. Therefore, the degree of PTS is not likely to affect the echolocation performance of the two porpoise species, which use frequencies mostly above 100 kHz. Nevertheless, for all marine mammal species, it is known that in general animals avoid areas where sound levels could cause hearing impairment. Nonetheless, we evaluate the estimated take in this negligible impact analysis.

For these species except harbor seal, harbor porpoise and Dall's porpoise, takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral and TTS). Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. A few marine mammals could experience TTS if they occur within the Level B TTS ZOI. However, as discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours.

Portions of the SRKW range is within the proposed action area. In addition, the entire Puget Sound is designated as the SRKW critical habitat under the ESA. However, WSDOT would be required to implement strict mitigation measures to suspend pile driving or pile removal activities when this stock is detected in the vicinity of the project area. We anticipate that take of SRKW would be avoided. There are no other known important areas for other marine mammals, such as feeding or pupping, areas.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' subsection. There is no ESA designated critical habitat in the vicinity of the Seattle Multimodal Project at Colman Dock area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, 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. Therefore, given the consideration of potential impacts to marine mammal prey species and their

physical environment, WSDOT's proposed construction activity at Colman Dock would not adversely affect marine mammal habitat.

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:

- Injury—only a relatively small number of marine mammals (of three stocks) would experience Level A harassment in the form of mild PTS, which is expected to be of small degree;
- Behavioral disturbance—eleven species/stocks of marine mammals would experience behavioral disturbance and TTS from the WSDOT's Seattle Colman Dock project. However, as discussed earlier, the area to be affected is small and the duration of the project is short. In addition, the nature of the take would involve mild behavioral modification; and
- Although portion of the SWKR critical habitat is within the project area, strict mitigation measures such as implementing shutdown measures and suspending pile drivingare expected to avoid take of SRKW, and impacts to prey species and the habitat itself are expected to be minimal. No other important habitat for marine mammals exist in the vicinity of the project area.

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.

The estimated takes are below 15 percent of the population for all marine mammals (Table 8).

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.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS' West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

The California-Oregon-Washington stock of humpback whale and the Southern Resident stock of killer whale are the only marine mammal species listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. NMFS worked with WSDOT to implement shutdown measures in the IHA that will avoid takes of Southern Resident killer whale. NMFS is proposing to authorize take of California/Oregon/Washington stock of humpback whale.

The effects of this proposed Federal action were adequately analyzed in NMFS' *Reinitiation of Endangered Species Act (ESA) Section 7(a)(2) Consultation (Humpback Whales) for the Seattle Multimodal Terminal at Colman Dock Project, King County, Washington* in October 2018, 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 Washington State Department of Transportation for conducting Seattle Multimodal Project at Colman Dock in Seattle, Washington, from August 1, 2019, to July 31, 2020, 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 issuance of an IHA to the Washington State Department of Transportation to take marine mammals incidental to its Seattle Multimodal Project at Colman Dock. We also request comment on the potential for 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 our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second 1-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, 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 beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(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; and

- 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 remain the same and appropriate, and the original findings remain valid.

Dated: May 29, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–11574 Filed 6–3–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0040]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fund for the Improvement of Postsecondary Education (FIPSE) Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 5, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kelley Harris, 202–453–7346.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fund for the Improvement of Postsecondary Education (FIPSE) Performance Report.

OMB Control Number: 1840–0793.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 42.

Total Estimated Number of Annual Burden Hours: 1,680.

Abstract: The Fund for the Improvement of Postsecondary Education (FIPSE) works to improve postsecondary education through grants to postsecondary educational institutions and agencies. Such grants are awarded to non-profit organizations on the basis of competitively reviewed applications submitted to FIPSE under the First in the World (FITW) Program. This collection includes a performance report for use with FITW programs 84.116F and 84.116X. We request clearance of one performance report for FITW programs 84.116F and 84.116X that will serve the dual purpose of an annual and final performance report. In this collection there is one (1) form, the performance report for FITW programs that includes a FITW program burden statement. The collection of the requested data in the performance report is necessary for the evaluation and assessment of FITW-funded programs and for assessment of continuation funding for each grantee. The current request for revision to the collection is to allow the grantees to use this report to complete a final performance report as well as an annual report.

Dated: May 29, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–11529 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0011]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Study of the Implementation of Adult Education Under the Workforce Innovation and Opportunity Act

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 5, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0011. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education,

550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Ali, 202–245–8345.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Study of the Implementation of Adult Education under the Workforce Innovation and Opportunity Act.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 620.

Total Estimated Number of Annual Burden Hours: 310.

Abstract: Title II of the Workforce Innovation and Opportunity Act (WIOA) of 2014 mandates a National Assessment of Adult Education. As part of the assessment, ED is conducting an implementation study of adult education programs. The implementation study will include a survey of state directors of adult education, a survey of local providers of adult education, and analyses of extant data.

Dated: May 30, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–11599 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2019–OCTAE–0007]

Final Requirements and Definitions—Tribally Controlled Postsecondary Career and Technical Institutions Program

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Final requirements and definitions.

SUMMARY: The Assistant Secretary for Career, Technical, and Adult Education announces requirements and definitions under the Tribally Controlled Postsecondary Career and Technical Institutions Program (TCPCTIP), Catalog of Federal Domestic Assistance (CFDA) number 84.245. The Assistant Secretary may use these requirements and definitions for a competition in fiscal year (FY) 2019 and in later years. We take this action to clarify the circumstances under which stipends may be paid to students attending tribally controlled postsecondary career and technical institutions and to establish requirements that applicants must meet to demonstrate that they: (1) Are eligible for assistance under TCPCTIP, and (2) will use grant funds in accordance with statutory requirements.

DATES: *Effective Date:* These requirements and definitions are effective July 5, 2019.

FOR FURTHER INFORMATION CONTACT: Kiawanta Hunter-Keiser, U.S. Department of Education, 400 Maryland Avenue SW, room 11–119, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7724. Email: *Kiawanta.Hunter-Keiser@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Section 117 of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115–224) (Perkins V or the Act) authorizes the Secretary to make grants to tribally controlled postsecondary career and technical institutions that do not receive Federal support under Title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1802, *et seq.*) or the Navajo Community College Act (Pub. L. 92–189; 85 Stat. 646) for career and technical education programs for Indian students and for the institutional support costs of the grant.

Program Authority: Section 117 of Perkins V (20 U.S.C. 2327).

We published a notice of proposed requirements and definitions for this program in the **Federal Register** on April 3, 2019 (84 FR 13012). That notice contained background information and our reasons for proposing the particular requirements and definitions for the TCPCTIP program.

There are no differences between the proposed requirements and definitions and these final requirements and definitions.

Tribal Consultation: On March 22, 2019, the Department solicited tribal input on the proposed requirements and definitions for the TCPCTIP prior to starting the rulemaking process, pursuant to Executive Order 13175 (''Consultation and Coordination With Indian Tribal Governments''). Tribal members participated in person and by virtual media. A total of 18 tribal members and no tribal leaders participated. None of the participants raised objections to the proposed requirements and definitions during the consultation.

Public Comment: In response to our invitation in the notice of proposed requirements and definitions, we did not receive any substantive comments that were directly related to the proposed requirements and definitions.

Final Requirements

Application Requirements: The Assistant Secretary announces the following application requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Final Application Requirements: To receive a TCPCTIP grant, an applicant must include one or more of the following in its application:

(a) Documentation showing that the applicant is eligible, according to each of the requirements in the Eligible Applicants section of this notice (and pursuant to sections 117(a) and (d) of Perkins V), including meeting the definition of the terms ''tribally controlled postsecondary career and technical institution'' and ''institution

of higher education'' (*e.g.,* proof of the institution's accreditation status) and certification that the institution does not receive Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801, *et seq.*) or the Navajo Community College Act (Pub. L. 92–189; 85 Stat. 646).

(b) Descriptions of the career and technical education programs, including academic courses, to be supported under the proposed TCPCTIP project. Projects funded under this competition must propose organized educational activities that meet the definition of career and technical education, as that term is defined in section 3(5) of the Act.

(c) The estimated number of students to be served by the proposed project in each career and technical education program in each year of the project.

(d) Goals and objectives for the proposed project, including how the attainment of the goals and objectives would further Tribal economic development plans, if any.

(e) A detailed budget identifying the costs to be paid with funds under this program for each year of the project period, and resources available from other Federal, State, and local sources, including any student financial aid, that will be used to achieve the goals and objectives of the proposed project.

(f) A description of the procedure the applicant intends to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

Program Requirements: The Assistant Secretary announces the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Final Program Requirements: (a) Stipends may be paid to enable students to participate in a TCPCTIP career and technical education program.

(1) To be eligible for a stipend, a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a TCPCTIP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that prevents participation in a project funded under this program without a stipend and that cannot be met through a work-study program.

(b) The amount of a stipend is based on the greater of either the minimum hourly wage prescribed by State or local law or the minimum hourly wage established under the Fair Labor Standards Act.

(c) A grantee may only award a stipend if the stipend combined with other resources the student receives does not exceed the student's financial need. A ''student's financial need'' is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of participating in a TCPCTIP project.

(d) To calculate the amount of a student stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the greater of the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $7.25 and a student attends classes for 20 hours a week, the student's stipend would be $145 for the week during which the student attends classes ($7.25 × 20 = $145).

(e) Grantees must maintain records that fully support their decisions to award stipends and the amounts that are paid, such as proof of a student's enrollment in a TCPCTIP, stipend applications, timesheets showing the number of attendance hours confirmed in writing by an instructor, student financial status information, and evidence that a student would not be able to participate in the TCPCTIP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700–75.702, 75.730, and 75.731)

(f) An eligible student may receive a stipend when taking a course for the first time. However, a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

Final Definitions

Final Definitions: The Assistant Secretary announces the following definitions for this program. We may apply one or both of these definitions in any year in which this program is in effect.

Institutional support of career and technical education means administrative expenses incurred by an eligible institution that are related to conducting a career and technical education program for Indian students that is assisted under section 117 of the Act and administering a grant awarded under section 117.

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these requirements and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules''

that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. The final requirements and definitions would be utilized in connection with a discretionary grant program and, therefore, Executive Order 13771 is not applicable.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final requirements and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined are necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that these final requirements and definitions would not impose significant costs on tribally controlled postsecondary career and technical institutions eligible for assistance under section 117 of Perkins V. We also believe that the benefits of implementing the final requirements and definitions justify any associated costs.

The Department believes that the final application requirements would help to ensure that: Only institutions eligible for assistance under section 117 of the Act receive such assistance; grants provided under section 117 of the Act are awarded only for allowable, reasonable, and necessary costs; and eligible applicants consider carefully in preparing their applications how the grants may be used to improve career and technical education programs and the outcomes of the students who enroll in them. The program requirements and related definitions are necessary to ensure that taxpayer funds are expended appropriately.

The Department further believes that the costs imposed on an applicant by the final requirements and definitions would be largely limited to the paperwork burden related to meeting the application requirements and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. Entities selected for awards under section 117 of the Act would be able to pay the costs associated with implementing the program requirements related to student stipends with grant funds. Thus, the costs of these final requirements and definitions would not be a significant burden for any eligible applicant.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995 (PRA): These final requirements and definitions do not contain any information collection requirements subject to the PRA. The Department is aware of fewer than nine tribally controlled postsecondary career and technical institutions that meet the eligibility requirements of section 117 of the Act and could thus be expected to apply in a response to a notice inviting applications. Information collection requirements imposed on nine or fewer individuals or entities are not subject to the PRA.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this final regulatory action would affect are institutions of higher education. We believe that the costs imposed on an applicant by the final requirements and definitions would be limited to paperwork burden related to preparing an application and that the benefits of implementing these final requirements and definitions would outweigh any costs incurred by the applicant.

Participation in TCPCTIP is voluntary. For this reason, the final application requirements would impose no burden on small entities unless they applied for funding under TCPCTIP. We expect that in determining whether to apply for TCPCTIP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a TCPCTIP grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application. The likely benefits of applying for a TCPCTIP grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the identification of long- and short-range plans for the institution and its career and technical education programs. Additionally, final application requirement (a), which would direct applicants to document their eligibility under section 117 of the

Act, would focus the attention of all prospective applicants on the eligibility requirements in section 117 of the Act and help discourage entities that do not meet them from incurring the time and expense of preparing a full application. The costs of meeting the other final requirements related to student stipends could be paid with grant funds and entities that do not receive a grant would not be required to meet them.

We believe that the final requirements and definitions would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application would likely be the same.

This final regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2019–11592 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—State Charter School Facilities Incentive Grants Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for CSP—State Charter School Facilities Incentive Grants Program, Catalog of Federal Domestic Assistance (CFDA) number 84.282D. This notice relates to the approved information collection under OMB control number 1855–0012.

DATES:

Applications Available: June 4, 2019.

Date of Pre-Application Meeting: The State Charter School Facilities Incentive Grants Program intends to hold a webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided on the State Charter School Facilities Incentive Grants Program web page at *https://innovation.ed.gov/what-we-do/charter-schools/state-charter-school-facilities-incentive-grants/applicant-info-and-eligibility/.*

Deadline for Transmittal of Applications: July 19, 2019.

Deadline for Intergovernmental Review: September 17, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Clifton Jones, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E211, Washington, DC 20202–5970. Telephone: (202) 205–2204. Email: *Clifton.Jones@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The State Charter School Facilities Incentive Grants Program provides grants to eligible *States* to help them establish or enhance, and administer, a *per-pupil facilities aid program* for *charter schools* in the *State,* that is specified in *State* law, and provides annual financing, on a per-pupil basis, for *charter school* facilities.

Priorities: This competition includes three competitive preference priorities. We are establishing the competitive preference priorities for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Competitive Preference Priorities: These priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 33 points to an application, depending on how well the application meets these priorities. We award up to an additional 5 points to an applicant that addresses Competitive Preference Priority 1; up to an additional 8 points to an applicant that addresses Competitive Preference Priority 2; and an additional 20 points to an applicant that meets Competitive Preference Priority 3.

These priorities are:

Competitive Preference Priority 1—Spurring Investment in Opportunity Zones (up to 5 points).

(a) Services targeted to Opportunity Zones (up to 5 points).

The extent to which the applicant would target services to a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97). An applicant must—

(1) Provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to provide services; and

(2) Describe how the applicant will provide services in the Qualified Opportunity Zone(s).

Competitive Preference Priority 2—State Support for Charter Schools (up to 8 points).

(a) High-Quality Charter School Authorizing (up to two points).

The extent to which the *State* demonstrates support for high-quality *charter school* authorizing, such as through providing technical assistance to support each *authorized public chartering agency* in the *State* to improve such agency's ability to monitor the *charter schools* authorized by the agency, including by—

(1) Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition;

(2) Reviewing the schools' independent, annual audits of financial statements prepared in accordance with generally accepted accounting principles, and ensuring that any such audits are publicly reported; and

(3) Holding *charter schools* accountable to the academic, financial, and operational quality controls agreed to between the *charter school* and the *authorized public chartering agency* involved, such as through renewal, non-renewal, or revocation of the school's charter.

(b) Number of Educational Choices through Charter Schools (up to two points).

The extent to which the *State* demonstrates progress in increasing the number of educational choices for students through the opening of new *charter schools,* the *replication* of *high-quality charter schools,* and the *expansion* of *high-quality charter schools.*

(c) At Least One Authorized Public Chartering Agency Other Than a Local Educational Agency (LEA), or an Appeals Process (0 or two points).

The *State*—

(1) Allows at least one entity that is not a local educational agency (LEA) to be an *authorized public chartering* agency for *developers* seeking to open a *charter school* in the *State;* or

(2) In the case of a *State* in which LEAs are the only *authorized public chartering agencies,* the *State* has an appeals process for the denial of an application for a *charter school.*

(d) High Degree of Autonomy and Flexibility (up to two points).

The extent to which the *State* ensures that each *charter school* receiving funds through the program will have a high degree of autonomy and flexibility, including autonomy over budget, operations, and personnel decisions.

Competitive Preference Priority 3—Novice Applicants (20 points).

Applicants that have not previously received a grant under the program.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under the substantially revised authority in section 4304(k) of the ESEA (20 U.S.C. 7221c(k)) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities and selection criterion under section 437(d)(1) of GEPA. These priorities and this selection criterion will apply to the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Definitions: The following definitions are from sections 4310(1), 4310(2), 4304(k)(1), and 8101(48) of the ESEA (20 U.S.C. 7221i(1), 7221i(2), 7221c(k)(1), 7801), and 34 CFR 77.1(c)

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target,* whether a *performance target* is *ambitious* depends upon the context of the relevant *performance measure* and the baseline for that measure.

Authorized public chartering agency means a *State* educational agency, local educational agency, or other public entity that has the authority pursuant to *State* law and approved by the Secretary to authorize or approve a *charter school.*

Charter school means a public school that—

(a) In accordance with a specific *State* statute authorizing the granting of charters to schools, is exempt from significant *State* or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements in section 4310 of the ESEA;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the *authorized public chartering agency;*

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*);

(h) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA (20 U.S.C. 7221b(c)(3)(A)), if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated *charter school* (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated *charter school* and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated *charter school* and the enrolling school, admits students on the basis of a lottery as described in paragraph (h)(i);

(i) Agrees to comply with the same Federal and *State* audit requirements as do other elementary schools and secondary schools in the *State,* unless such *State* audit requirements are waived by the *State;*

(j) Meets all applicable Federal, *State,* and local health and safety requirements;

(k) Operates in accordance with *State* law;

(l) Has a written performance contract with the *authorized public chartering agency* in the *State* that includes a description of how student performance will be measured in *charter schools* pursuant to *State* assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the *authorized public chartering agency* and the *charter school;* and

(m) May serve students in early childhood education programs or postsecondary students.

Demonstrates a rationale means a key *project component* included in the project's *logic model* is informed by research or evaluation findings that suggest the *project component* is likely to improve *relevant outcomes.*

Logic model (also referred to as a theory of action) means a framework that identifies key *project components*

of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key *project components* and *relevant outcomes.*

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Per-pupil facilities aid program means a program in which a *State* makes payments, on a per-pupil basis, to *charter schools* to provide the schools with financing—

(a) That is dedicated solely to funding *charter school* facilities; or

(b) A portion of which is dedicated for funding *charter school* facilities.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual *project component* or to a combination of *project components* (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key *project component* is designed to improve, consistent with the specific goals of the program.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

Program Authority: 20 U.S.C. 7221c.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 226.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,000,000.

Estimated Range of Awards: $1,000,000 to $10,000,000.

Estimated Average Size of Awards: $5,000,000.

Estimated Number of Awards: 1–3.

*Note:*The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants: States.* In order to be eligible to receive a grant, a *State* shall establish or enhance, and administer, a per-pupil facilities aid program for *charter schools* in the *State,* that—

(a) Is specified in *State* law; and

(b) Provides annual financing, on a per-pupil basis, for *charter school* facilities.

Note: A *State* that is required under *State* law to provide *charter schools* with access to adequate facility space, but that does not have a *per-pupil facilities aid program* for *charter schools* specified in *State* law, is eligible to receive a grant if the *State* agrees to use the funds to develop a *per-pupil facilities aid program* consistent with the requirements in this notice inviting applications.

2.a. *Cost Sharing or Matching:* Under section 4304(k)(2)(C) of the ESEA, a *State* must provide a *State* share of the total cost of the project. The minimum *State* share of the total cost of the project increases each year of the grant, from 10 percent the first year to 80 percent in the fifth year.

Note: A *State* may partner with one or more organizations, and such organizations may provide up to 50 percent of the *State* share of the cost of establishing or enhancing, and administering, the *per-pupil facilities aid program.*

Applicants that are provisionally selected to receive grants will not receive grant funds unless they demonstrate, by September 1, 2019, that they are, or will be able to, provide the *State* share required under this program.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 4110 of the ESEA (20 U.S.C. 7120), program funds must be used to supplement, and not supplant, *State* and local public funds expended to provide *per-pupil facilities aid programs,* operations financing programs, or other programs, for *charter schools.* Therefore, the Federal funds provided under this program, as well as the matching funds provided by the grantee, must be in addition to the *State* and local funds that would otherwise be used for this purpose in the absence of this Federal program. The Department generally considers that *State* and local funds would be available for this purpose at least in the amount of the funds that was available in the preceding year and that the Federal funds and matching funds under this program would supplement that amount.

3. *Other:* The *charter schools* that a grantee selects to benefit from this program must meet the definition of *charter school* in the CSP authorizing statute throughout the grant period. The definitions of *charter school, per-pupil facilities aid programs,* and *authorized public chartering agency* are in sections 4310(2), 4304(k)(1), and 4310(1) of the ESEA (20 U.S.C. 7221), and included in this notice.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the State Charter School Facilities Incentive Grants Program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372

is in the application package for this competition.

4. *Funding Restrictions:* Under section 4304(k)(3)(B) of the ESEA, from the amount made available to a *State* through a grant under this program for a fiscal year, the *State* may reserve not more than five percent to carry out evaluations, to provide technical assistance, and to disseminate information. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

V. Application Review Information

1. *Selection Criteria:* We are establishing the selection criterion (d)(3) for the FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1), and the remainder of the selection criteria for this program are from 34 CFR 226.12 and 34 CFR 75.210. The maximum score for addressing all of the selection criteria is 100 points. The maximum score for addressing each criterion is indicated in parentheses.

(a) *Need for facility funding* (30 points).

(1) The need for per-pupil *charter school* facility funding in the *State.*

(2) The extent to which the proposal meets the need to fund *charter school* facilities on a per-pupil basis.

(b) *Quality of plan* (40 points).

(1) The likelihood that the proposed grant project will result in the *State* either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance (*State* and Federal) declining over a five-year period.

(2) The flexibility *charter schools* have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying *charter schools* and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to *charter schools* with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(7) The extent to which the proposed project *demonstrates a rationale.*

Note: The applicant should review the *Performance Measures* section of this notice for information on the requirements for developing project-specific *performance measures* and targets consistent with the objectives of the program.

(c) *The grant project team* (10 points).

(1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget* (10 points).

(1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 4304(k)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *Quality of the project evaluation* (10 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors—

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the methods of evaluation will provide valid and reliable performance data on *relevant outcomes.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Note: As described in 34 CFR 226.14(c), the Secretary may elect to consider the points awarded under the competitive preference priorities only for proposals that exhibit sufficient quality to warrant funding under the selection criteria.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under

Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:*

(a) *Program Performance Measures.* The *performance measure* for this program is the ratio of funds leveraged by *States* for *charter school* facilities to funds awarded by the Department under the program. Grantees must provide information that is responsive to this measure as part of their annual performance reports.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific *performance measures* and *performance targets* consistent with the objectives of the project and program. Applicants must provide the following information as directed under 34 CFR 75.110(b):

(1) *Project Performance Measures.* How each proposed project-specific *performance measure* would accurately measure the performance of the project and how the proposed project-specific *performance measure* would be consistent with the *performance measures* established for the program funding the competition.

(2) *Project Performance Targets.* Why each proposed *performance target* is *ambitious* yet achievable compared to the baseline for the *performance measure* and when, during the project period, the applicant would meet the *performance target(s).*

Note: The Secretary encourages applicants to consider measures and targets tied to their grant activities during the grant period. For instance, if an applicant is using eligibility for free and reduced-price lunch to measure the number of low-income families served by the project, the applicant could provide a percentage for students qualifying for free and reduced-price lunch. If an applicant is targeting services to a Qualified Opportunity Zone, the applicant could provide the census tract number of the Qualified Opportunity Zone(s)in which it proposes to provide services. The measures should be sufficient to gauge the progress throughout the grant period, and show results by the end of the grant period.

(3) *Data Collection and Reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If applicants do not have experience with collection and reporting of performance data through other projects or research, they should provide other evidence of their capacity to successfully carry out data collection and reporting for their proposed project.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the *performance targets* in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person

listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–11517 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Alaska Native and Native Hawaiian-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for the Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Program, Catalog of Federal Domestic Assistance (CFDA) numbers 84.031N (Alaska Native) and 84.031W (Native Hawaiian). This notice relates to the approved information collection under OMB control number 1840–0810.

DATES:

Applications Available: June 4, 2019.

Deadline for Transmittal of Applications: July 5, 2019.

Deadline for Intergovernmental Review: September 3, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Robyn Wood, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–42, Washington, DC 20202–4260. Telephone: (202) 453–7744. Email: *Robyn.Wood@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The ANNH Program provides grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Alaska Natives and Native Hawaiians. Institutions may use these grants to plan, develop, or implement activities that strengthen the institution.

Priorities: This notice contains one competitive preference priority. This priority is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (83 FR 9096) (Supplemental Priorities), which were published in the **Federal Register** on March 2, 2018.

Competitive Preference Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional three points to an application, depending on how well the application meets this priority.

This priority is:

Fostering Knowledge and Promoting the Development of Skills that Prepare Students to be Informed, Thoughtful, and Productive Individuals and Citizens (up to 3 points).

Projects that are designed to address supporting instruction in personal financial literacy, knowledge of markets and economics, knowledge of higher education financing and repayment (*e.g.,* college savings and student loans), or other skills aimed at building personal financial understanding and responsibility.

Definitions: These definitions apply to the selection criteria for this competition and are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp,* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Program Authority: 20 U.S.C. 1059d (title III, part A, of the Higher Education Act of 1965, as amended (HEA)).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. Please note that the regulations for ANNH in 34 CFR part 607 have not been updated to reflect these statutory changes. The statute supersedes all other regulations.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2019.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible IHE, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: $6,510,398.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 from the list of unfunded applications from this competition.

Individual Development Grants

Estimated Range of Awards: $350,000–$400,000 per year.

Estimated Average Size of Awards: $375,000 per year.

Maximum Award: We will not make an award exceeding $400,000 for a single budget period of 12 months.

Estimated Number of Awards: 14.

Cooperative Arrangement Development Grants

Estimated Range of Awards: $400,000–$450,000 per year.

Estimated Average Size of Awards: $425,000 per year.

Maximum Award: We will not make an award exceeding $450,000 for a single budget period of 12 months.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1.a. *Eligible Applicants:*

This program is authorized by title III, part A, of the HEA. At the time of submission of their applications, applicants must certify their total undergraduate headcount enrollment and that either 20 percent of the IHE's enrollment is Alaska Native or 10 percent is Native Hawaiian. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted.

To qualify as an eligible institution under the ANNH Program, an institution must—

(i) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(ii) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree;

(iii) Be designated as an ''eligible institution,'' as defined in 34 CFR 600.2, by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2019 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on January 29, 2019 (84 FR 451). Only institutions that the Department determines are eligible, or which are granted a waiver under the process described in that notice, may apply for a grant in this program.

b. *Relationship between the Title III, Part A Programs and the Developing Hispanic-Serving Institutions (HSI) Program:*

A grantee under the HSI Program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program. The title III, part A programs are: The Strengthening Institutions Program; the Tribally Controlled Colleges and Universities program; the Alaska Native and Native Hawaiian-Serving Institutions program; the Asian American and Native American Pacific Islander-Serving Institutions program; and the Native American-Serving Nontribal Institutions program. Furthermore, a current HSI program grantee may not give up its HSI grant in order to be eligible to receive a grant under ANNH or any title III, part A program as described in 34 CFR 607.2(g)(1).

An eligible HSI that is not a current grantee under the HSI program may apply for a FY 2019 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

An eligible IHE that submits applications for an Individual Development Grant and a Cooperative Arrangement Development Grant in this competition may be awarded both in the same fiscal year. However, we will not award a second Cooperative Arrangement Development Grant to an otherwise eligible IHE for an award year for which the IHE already has a Cooperative Arrangement Development Grant award under the ANNH Program. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a subgrantee in one or more Cooperative Arrangement Development Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners or subgrantees are not required to be eligible institutions.

2.a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30 (b)).

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants and (2) use the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract and the bibliography. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 607.22(a) through (g) and 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses.

(a) *Quality of the applicant's comprehensive development plan.* (20 points). The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of activity objectives.* (15 points). The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(c) *Quality of the project design.* (10 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

(d) *Quality of implementation strategy.* (18 points). The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(e) *Quality of key personnel.* (8 points). The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(f) *Quality of project management plan.* (10 points). The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(g) *Quality of evaluation plan.* (12 points). The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(h) *Budget.* (7 points). The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from the competitive preference priority.

In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2017–2018 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the

lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the ANNH Program:

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at Alaska Native and Native Hawaiian-Serving Institutions (Note: This is a long-term measure, which will be used to periodically gauge performance);

(b) The percentage of first-time, full-time degree-seeking undergraduate students at four-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(c) The percentage of first-time, full-time degree-seeking undergraduate students at two-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year Alaska Native and Native Hawaiian-Serving Institutions who graduate within six years of enrollment; and

(e) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year Alaska Native and Native Hawaiian-Serving Institutions who graduate within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced feature at this site, you can limit your search to documents published by the Department.

Dated: May 29, 2019.

Diane Auer Jones,

Principal Deputy Under Secretary, Delegated to Perform the Duties of Under Secretary and Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2019–11624 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Alaska Native and Native Hawaiian-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for the Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Program, Catalog of Federal Domestic Assistance (CFDA) numbers 84.031R (Alaska Native) and 84.031V (Native Hawaiian). This notice relates to the approved information collection under OMB control number 1840–0810.

DATES:

Applications Available: June 4, 2019.

Deadline for Transmittal of Applications: July 5, 2019.

Deadline for Intergovernmental Review: September 3, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Robyn Wood, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–42, Washington, DC 20202–4260. Telephone: (202) 453–7744. Email: *Robyn.Wood@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The ANNH Program provides grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Alaska Natives and Native Hawaiians. Institutions may use these grants to plan, develop, or implement activities that strengthen the institution.

Priorities: This notice contains one competitive preference priority. This priority is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (83 FR 9096) (Supplemental Priorities), which were published in the **Federal Register** on March 2, 2018.

Competitive Preference Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional three points to an application, depending on how well the application meets this priority.

This priority is:

Fostering Knowledge and Promoting the Development of Skills that Prepare Students to be Informed, Thoughtful, and Productive Individuals and Citizens (up to 3 points).

Projects that are designed to address supporting instruction in personal financial literacy, knowledge of markets and economics, knowledge of higher education financing and repayment (*e.g.,* college savings and student loans), or other skills aimed at building personal financial understanding and responsibility.

Definitions: These definitions apply to the selection criteria for this competition and are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s)or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Program Authority: 20 U.S.C. 1067q (title III, part F, of the Higher Education Act of 1965, as amended (HEA)).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR 607. (e) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants. Two-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2019.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible IHE, under which the

resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: $4,967,181.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 from the list of unfunded applications from this competition.

Individual Development Grants

Estimated Range of Awards: $350,000–$400,000 per year.

Estimated Average Size of Awards: $375,000 per year.

Maximum Award: We will not make an award exceeding $400,000 for a single budget period of 12 months.

Estimated Number of Awards: 10.

Cooperative Arrangement Development Grants

Estimated Range of Awards: $400,000–$450,000 per year.

Estimated Average Size of Awards: $425,000 per year.

Maximum Award: We will not make an award exceeding $450,000 for a single budget period of 12 months.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* This program is authorized by title III, part F, of the HEA. At the time of submission of their applications, applicants must certify their total undergraduate headcount enrollment and that either 20 percent of the IHE's enrollment is Alaska Native or 10 percent is Native Hawaiian. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted.

To qualify as an eligible institution under the ANNH Program, an institution must—

(a) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(b) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree;

(c) Be designated as an ''eligible institution'' by demonstrating that it: (1) Has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2019 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on January 29, 2019 (84 FR 451). Only institutions that the Department determines are eligible, or which are granted a waiver under the process described in that notice, may apply for a grant in this program.

An eligible IHE that submits applications for an Individual Development Grant and a Cooperative Arrangement Development Grant in this competition may be awarded both in the same fiscal year. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a subgrantee in one or more Cooperative Arrangement Development Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners or subgrantees are not required to be eligible institutions.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30 (b)).

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contains requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages for Individual Development Grants and no more than 65 pages for Cooperative Arrangement Development Grants and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract and the bibliography. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 607.22(a) through (g) and 34 CFR 75.210. Applicants should address each of the following selection criteria (separately for each proposed activity). The selection criteria are worth a total of 100 points; the maximum score for each criterion is noted in parentheses.

(a) *Quality of the applicant's comprehensive development plan.* (20 points). The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed

and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of activity objectives.* (15 points). The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(c) *Quality of the project design.* (10 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

(d) *Quality of implementation strategy.* (18 points). The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(e) *Quality of key personnel.* (8 points). The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(f) *Quality of project management plan.* (10 points). The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(g) *Quality of evaluation plan.* (12 points). The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(h) *Budget.* (7 points). The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review and from the competitive preference priority.

In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2017–2018 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant

plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the ANNH Program:

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at Alaska Native and Native Hawaiian-Serving Institutions (**Note:** This is a long-term measure, which will be used to periodically gauge performance);

(b) The percentage of first-time, full-time degree-seeking undergraduate students at four-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(c) The percentage of first-time, full-time degree-seeking undergraduate students at two-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year Alaska Native and Native Hawaiian-Serving Institutions who graduate within six years of enrollment; and

(e) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year Alaska Native and Native Hawaiian-Serving Institutions who graduate within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced feature at this site, you can limit your search to documents published by the Department.

Dated: May 29, 2019.

Diane Auer Jones,

Principal Deputy Under Secretary, Delegated to Perform the Duties of Under Secretary and Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2019–11623 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0037]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Financial Report for the Endowment Challenge Grant Program and Institutional Service Endowment Activities

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is

proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 5, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0037. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beverly Baker, 202–453–6162.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Financial Report for the Endowment Challenge Grant Program and Institutional Service Endowment Activities.

OMB Control Number: 1840–0564.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 2,500.

Total Estimated Number of Annual Burden Hours: 3,125.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Financial Report is to have the grantees report annually the kinds of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Dated: May 29, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–11528 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Alaska Native Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the Alaska Native Education (ANE) program, Catalog of Federal Domestic Assistance (CFDA) number 84.356A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: Applications Available: June 4, 2019.

Deadline for Notice of Intent to Apply: May 31, 2019.

Deadline for Transmittal of Applications: July 5, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E222, Washington, DC 20202. Telephone: (202) 260–1979. Email: *OESE.ASKANEP@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the ANE program is to support innovative projects that recognize and address the unique educational needs of Alaska Natives. These projects must include the activities authorized under section 6304(a)(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and may include one or more of the activities authorized under section 6304(a)(3) of the ESEA.

Background: The ANE program serves the unique educational needs of Alaska Natives and recognizes the roles of Alaska Native languages and cultures in the educational success and long-term well-being of Alaska Native students. The program supports effective supplemental education programs that maximize participation of Alaska Native educators and leaders in the planning, development, implementation, management, and evaluation of programs designed to serve Alaska Natives. Permissible activities include, but are not limited to, curriculum development, training and professional development, early childhood and parent outreach, and enrichment programs, as well as construction.

The ANE program encourages grantees to undertake a broad array of activities to achieve these purposes, including many that are consistent with the Administration's policy focus areas as expressed in the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (83 FR 9096) (Supplemental Priorities). For example, section 6304(a)(3)(D) of the ESEA authorizes student enrichment programs, including programs in science, technology, engineering, and

mathematics (STEM) that prepare Native students to excel in these subjects, provide appropriate supports so that students can benefit from them, and include activities that incorporate the unique cultural and educational needs of Native children. Similarly, Supplemental Priority 6 calls for projects in STEM, including computer science, that support student mastery of key prerequisites to ensure success in all STEM fields and expose students to building-block skills such as critical thinking and problem-solving, gained through hands-on, inquiry-based learning. Section 6304(a)(3)(B) of the ESEA also authorizes training and professional development activities for educators that include pre-service and in-service programs for teachers on understanding Alaska Native history, culture, values, and ways of knowing and learning, as well as recruitment and preparation of Alaska Native teachers and school leaders. Supplemental Priority 8 is designed to support the recruitment of educators who are effective and increase diversity (including, but not limited to, racial and ethnic diversity), as well as promote the number of students in rural schools who have access to effective educators.

As a final example, section 6304(a)(3)(K) authorizes career preparation activities to enable Alaska Native children and adults to prepare for meaningful employment, including programs providing tech-prep, mentoring, training, and apprenticeship activities. Similarily, Supplemental Priority 4 is designed to support projects likely to improve student academic performance and better prepare students for employment, responsible citizenship, and fulfilling lives.

Definitions: The definitions for ''Alaska Native'' and ''Alaska Native organization'' are from section 6306 of the ESEA (20 U.S.C. 7546). The definitions for ''logic model,'' ''demonstrates a rationale,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1. The definition for ''Native'' is from section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)). In addition, the definitions for ''experience operating programs that fulfill the purposes of the ANE program,'' ''official charter or sanction,'' and ''predominately governed by Alaska Natives'' are from the notice of final definitions and requirements published elsewhere in this issue of the **Federal Register**.

Alaska Native has the same meaning as the term Native has in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) and includes the descendants of individuals so defined.

Alaska Native organization means an organization that has or commits to acquire expertise in the education of Alaska Natives and is—

(a) An Indian tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)), located in Alaska;

(b) A tribal organization, as defined in section 4 of such Act (25 U.S.C. 450(b)), located in Alaska; or

(c) An organization listed in clauses (i) through (xii) of section 419(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)(i) through (xii)), or the successor of an entity so listed.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Experience operating programs that fulfill the purposes of the ANE program means that, within the past four years, the entity has received and satisfactorily administered, in compliance with applicable terms and conditions, a grant under the ANE program or another Federal or non-Federal program that focused on meeting the unique education needs of Alaska Native children and families in Alaska.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary of the Interior regarding eligibility for enrollment shall be final.

Official charter or sanction means a signed letter or written agreement from an Alaska Native Tribe or ANO that is dated within 120 days prior to the date of the submission of the application and expressly (1) authorizes the applicant to conduct activities authorized under the ANE program and (2) describes the nature of those activities.

Predominately governed by Alaska Natives means that at least 80 percent of the entity's governing board (*i.e.,* board elected or appointed to direct the policies of the organization) are Alaska Natives.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Application Requirements: The following requirements are from section 6304(a)(2) of the ESEA and from the notice of final definitions and requirements published elsewhere in this issue of the **Federal Register**. In order to receive funding, an applicant must meet the following requirements, as applicable:

(a) All applicants:

(1) The applicant must provide a detailed description of the plans, methods, strategies, and activities it will develop and implement to improve the educational outcomes of Alaska Natives; and how the applicant will develop and implement such plans, methods, strategies, and activities; and

(2) The applicant must provide a detailed description of the data it will collect to assist in the evaluation of the programs carried out under the ANE program, including data that address the performance measures in section VI.5 (Performance Measures) of this notice; and how the applicant will collect such data.

(b) Group Application:

An applicant that applies as part of a partnership must meet this requirement, in addition to the requirements in paragraph (a).

(1) An ANO that applies for a grant in partnership with a State educational agency (SEA) or local educational agency (LEA) must serve as the fiscal agent for the project.

(2) Group applications under the ANE program must include a partnership agreement that includes a Memorandum of Understanding or a Memorandum of Agreement (MOU/MOA) between the members of the partnership identified and discussed in the grant application. Each MOU/MOA must—

(i) Be signed by all partners, and dated within 120 days prior to the date of the submission of the application;

(ii) Clearly outline the work to be completed by each partner that will participate in the grant in order to accomplish the goals and objectives of the project; and

(iii) Demonstrate an alignment between the activities, roles, and responsibilities described in the grant application for each of the partners in the partnership agreement.

(c) Applicants Establishing Eligibility through a Charter or Sanction from an Alaska Native Tribe or ANO:

For an entity that does not meet the eligibility requirements for an ANO, established in section 6304(a)(1) and 6306(2) of the ESEA and the notice of final definitions and requirements published elsewhere in this issue of the **Federal Register**, and that seeks to establish eligibility through a charter or sanction provided by an Alaska Native Tribe or ANO as required under section 6304(a)(1)(C)(ii) of the ESEA, the following documentation is required, in addition to the information in paragraph (a) and, if applicable, paragraph (b).

(1) Written documentation demonstrating that the entity is physically located in the State of Alaska.

(2) Written documentation demonstrating that the entity has experience operating programs that fulfill the purposes of the ANE program.

(3) Written documentation demonstrating that the entity is predominately governed by Alaska Natives, including the total number, names, and Tribal affiliations of members of the governing board.

(4) A copy of the official charter or sanction provided to the entity by an Alaska Native Tribe or ANO.

Statutory Hiring Preference: (a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this requirement, an Indian is a member of any federally recognized Indian Tribe.

Program Authority: Title VI, part C of the ESEA (20 U.S.C. 7541–7546).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The notice of final definitions and requirements published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $19,580,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$1,500,000 for each 12-month budget period.

Estimated Average Size of Awards: $490,000 for each 12-month period.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) Alaska Native organizations with experience operating programs that fulfill the purposes of the ANE program;

(b) Alaska Native organizations that do not have experience operating programs that fulfill the purposes of the ANE program, but are in partnership with—

(i) An SEA or LEA; or

(ii) An Alaska Native organization that operates a program that fulfills the purposes of the ANE program; or

(c) An entity located in Alaska, and predominately governed by Alaska Natives, that does not meet the definition of an Alaska Native organization but—

(i) Has experience operating programs that fulfill the purposes of the ANE program; and

(ii) Is granted an official charter or sanction from at least one Alaska Native Tribe or Alaska Native organization to carry out programs that meet the purposes of the ANE program.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the ANE program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* No more than five percent of funds awarded for a grant under this program may be used for administrative costs (20 U.S.C. 7545). This five-percent limit must include both direct and indirect administrative costs. Please see the application package for more information about the administrative cost limit. We reference regulations outlining additional funding

restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and section 6304(a)(2)(A) of the ESEA. The maximum score for all of the selection criteria is 120 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

The selection criteria are as follows:

(a) *Need for project* (up to 20 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Quality of the project design* (up to 40 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 20 points);

(ii) The extent to which the proposed project demonstrates a rationale (as defined in this notice) (up to 10 points); and

(iii) The extent to which the project plans, methods, strategies, and activities described by the applicant under Application Requirement (a)(1) will improve educational outcomes for Alaska Natives (up to 10 points).

(c) *Quality of the management plan* (up to 40 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 20 points); and

(ii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project (up to 20 points).

(d) *Quality of project personnel* (up to 10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the project evaluation* (up to 10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (up to 5 points)

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates. (up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2), we must make a judgment about your integrity, business

ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* We have established four performance measures for the ANE program: (1) The percentage of Alaska Native students in schools served by the program who meet or exceed proficiency standards in reading, mathematics, and science on the Alaska State assessments; (2) the percentage of Alaska Native children participating in early learning and preschool programs who consistently demonstrate school readiness in language and literacy as measured by the Revised Alaska Development Profile; (3) the percentage of Alaska Native students in schools served by the program who graduate from high school with a high school diploma in four years; and (4) the number of Alaska Native programs that primarily focus on Alaska Native culture and language.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–11520 Filed 6–3–19; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Extension of Comment Period for the Proposed Voluntary Voting System Guidelines 2.0 Principles and Guidelines

AGENCY: United States Election Assistance Commission.

ACTION: Notice of extension of the comment period for the Voluntary Voting System Guidelines 2.0 Principles and Guidelines.

SUMMARY: In accordance with the Help America Vote Act of 2002, the U.S. Election Assistance Commission (EAC) is publishing the Voluntary Voting System Guidelines 2.0 Principles and Guidelines (VVSG 2.0) for public comment. The VVSG 2.0 Principles and Guidelines provide high level principles and guidelines to which voting systems can be tested to determine if they provide basic functionality, accessibility, and security capabilities.

DATES: The Comment period has been extended to 5:00 p.m. EST on June 7, 2019.

Submission of Comments: The public may submit comments through one of the two following methods provided by the EAC: (1) By mail to Voluntary Voting System Guidelines 2.0. Principles and Guidelines Comments, U.S. Election Assistance Commission, 1335 East-West Highway, Suite 4300, Silver Spring, Maryland 20910, and (2) via online submission form at *https://www.eac.gov/vvsg-form/.* The email address *votingsystemguidelines@eac.gov* is no longer accepting comments.

In order to allow efficient and effective review of comments the EAC requests that:

(1) Comments refer to the specific section that is the subject of the comment.

(2) General comments regarding the entire document or comments that refer to more than one section be made as specifically as possible so that EAC can clearly understand to which portion(s) of the documents the comment refers.

(3) To the extent that a comment suggests a change in the wording of a Principal or Guideline or section of the guidelines, please provide proposed language for the suggested change.

To Obtain a Copy of the VVSG Volume Version 2.0 Principles and Guidelines: A complete copy of the draft VVSG 2.0 Principles and Guidelines is available from the EAC in electronic format. An electronic copy can be downloaded in PDF format on the EAC's website, *http://www.eac.gov.* In order to obtain a paper copy of the TGDC draft recommendations please mail a written request to Voluntary Voting System Guidelines 2.0 Principles and Guidelines Comments, U.S. Election Assistance Commission, 1335 East-West Highway, Suite 4300, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Jerome Lavoto, Phone (301) 563–3929, or at *https://www.eac.gov/contact/.*

SUPPLEMENTARY INFORMATION: As required by Section 222(d) of HAVA the EAC is placing the proposed VVSG 2.0 Principles and Guidelines as submitted by the Technical Guidelines Development Committee (TGDC) out for a 90 public comment period. The EAC is asking for comments regarding all sections of the Principles and Guidelines including the proposed Structure of the VVSG 2.0. The Principles and Guidelines will subsequently be accompanied by Requirements, which will be distributed to the TGDC, the Standards Board, the Board of Advisors and submitted for public comment and consideration by the Commission.

The EAC made the decision to undertake the drafting of VVSG 2.0 Principles and Guidelines as a result of feedback received over several years from a variety of stakeholders including, but not limited to State and local election officials, voting system manufacturers and usability, accessibility and security interest groups.

The EAC Technical Guidelines Development Committee (TGDC) proposed a different structure for developing the VVSG 2.0 than in previous years. This structure differs significantly from previous versions of the VVSG because it is a high level principles and guidelines document. The Principles are high-level system design goals. The Guidelines are a broad description of the functions that make up a voting system. This new structure has significantly decreased the size and complexity of the VVSG from previous versions.

Unlike previous versions of the VVSG, this proposed version recommends that the Requirements for testing a voting system be separate and apart from the Principles and Guidelines. As proposed, the VVSG 2.0 Principles and Guidelines will be accompanied by a separate document that details the Requirements for how systems can meet the new Principles and Guidelines in order to obtain certification. The Requirements will subsequently be accompanied by Test Assertions for how the accredited test laboratories will validate that the system complies with the Requirements and the Principles and Guidelines.

The Requirements will be adjunct to the VVSG Principles and Guidelines itself and will be subject to public review and comment, including distribution to the EAC's TGDC, Standards Board and Board of Advisors for comment prior to consideration and implementation by the Commission.

The TGDC unanimously approved to recommend VVSG 2.0 Principles and Guidelines on September 12, 2017, and sent the Principles and Guidelines to the EAC Executive Director via the Director of the National Institute of Science and Technology (NIST), in the capacity of the Chair of the TGDC. The Commission will accept comments on the proposed structure of the VVSG 2.0 Principles and Guidelines as well as on the content of the Principles and Guidelines.

The Voluntary Voting System Guidelines version 2.0 Principles and Guidelines (VVSG 2.0), is the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSG on December 13, 2005. In an effort to update and improve version 1.0 of the VVSG, on March 31, 2015, the EAC commissioners unanimously approved VVSG 1.1.

* * * * *

Clifford D. Tatum,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2019–11555 Filed 6–3–19; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho Cleanup Project. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 20, 2019, 8:00 a.m.–4:00 p.m.

The opportunities for public comment are at 10:45 a.m. and 3:00 p.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Shoshone-Bannock Hotel and Event Center, 777 Bannock Trail, Fort Hall, ID 83203.

FOR FURTHER INFORMATION CONTACT: Brad Bugger, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–0833; or email: *buggerbp@id.doe.gov* or visit the Board's internet home page at: *https://energy.gov/em/icpcab/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Brad Bugger for the most current agenda):

- Recent Public Outreach
- Idaho Cleanup Project (ICP) Overview
- Update on Integrated Waste Treatment Unit (IWTU)
- Calcine Analysis of Alternatives
- Solid Waste Treatment Successes
- Report on EM SSAB Chairs Meeting
- Report from Subcommittees

Public Participation: The meeting is open to the public. The EM SSAB, Idaho Cleanup Project, 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 Brad Bugger at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Brad Bugger at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Brad Bugger, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/em/icpcab/listings/cab-meetings.*

Signed in Washington, DC, on May 30, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–11580 Filed 6–3–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Extension of a Currently Approved Information Collection for the Weatherization and Intergovernmental Programs

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). The information collection request, Historic Preservation for Energy Efficiency Programs, was initially approved on December 1, 2010 under OMB Control No. 1910–5155 and was reinstated on September 12, 2016. The current expiration date is September 30, 2019. The extension of this currently approved information collection, will allow DOE to continue data collection on the status of the Weatherization Assistance Program (WAP), the State Energy Program (SEP), and the Energy Efficiency and Conservation Block Grant (EECBG) program.

DATES: Comments regarding this collection must be received on or before July 5, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to the

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503

and to

Christine Askew, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, Email: *Christine.Askew@ee.doe.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Christine Askew, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–1290, Phone: (202) 586–8224, Fax: (202) 287–1992, Email: *Christine.Askew@ee.doe.gov.*

Additional information and reporting guidance concerning the Historic Preservation reporting requirement for the WAP, SEP, and EECBG programs are available for review at: *https://www.energy.gov/eere/wipo/downloads/wpn-10-12-historic-preservation-implementation.*

SUPPLEMENTARY INFORMATION: Programs will ensure compliance with the National Historic Preservation Act (NHPA). Comments are invited on: (a) Whether the extended 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, including the validity of the methodology and 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. This information collection request contains: (1) *OMB No.:* 1910–5155; (2) *Information Collection Request Title:* ''Historic Preservation for Energy Efficiency Programs''; (3) *Type of Review:* Extension of a Currently Approved Information Collection; (4) *Purpose:* To collect information on the status of Weatherization Assistance Program, State Energy Program, and Energy Efficiency and Conservation Block Grant Program activities; (5) *Annual Estimated Number of Respondents:* 275; (6) *Annual Estimated Number of Total Responses:* 275; (7) *Annual Estimated Number of Burden Hours:* 662; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: Title V, National Historic Preservation Act of 1966, Pub. L. 89–665 as amended (16 U.S.C. 470 *et seq.*).

Issued in Washington, DC, May 23, 2019.

AnnaMaria Garcia,

Director, Weatherization and Intergovernmental Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2019–11611 Filed 6–3–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 19, 2019, 1:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Office, 94 Cities of Gold Road, Pojoaque, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring and Remediation Committee (EM&R): The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Approval of Agenda and Meeting Minutes of April 10, 2019
- Old Business
  - Report from Chair
  - Consideration and Action on Draft Recommendation 2019–02, Improving the Utility of the Consent Order
  - Other Items
- New Business
  - Discussion on NNMCAB Committee and Work Plans
  - Election of Committee Officers
  - Other Items
- Break
- Presentation on N3B Education and Apprenticeship Programs/N3B Staffing Numbers
- Update from Deputy Designated Federal Officer
- Public Comment Period
- Adjourn

Public Participation: The meeting is open to the public. The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on May 30, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–11581 Filed 6–3–19; 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 corporate filings:

Docket Numbers: EC19–94–000.

Applicants: Oasis Power Partners, LLC, Sagebrush, a California partnership, Oasis Wind Holdings, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, *et al.* of Oasis Power Partners, LLC, *et al.*

Filed Date: 5/24/19.

Accession Number: 20190524–5257.

Comments Due: 5 p.m. ET 6/14/19.

Docket Numbers: EC19–95–000.

Applicants: Craven County Wood Energy Limited Partnership, Grayling Generating Station Limited Partnership.

Description: Application for Authorization Under Section 203 of the Federal Power Act, *et al.* of Craven County Wood Energy Limited Partnership, *et al.*

Filed Date: 5/24/19.

Accession Number: 20190524–5266.

Comments Due: 5 p.m. ET 6/14/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–372–006.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing Pursuant to 4/29/2019 Order to be effective 4/29/2019.

Filed Date: 5/28/19.

Accession Number: 20190528–5033.

Comments Due: 5 p.m. ET 6/18/19.

Docket Numbers: ER19–1979–000.

Applicants: Hecate Energy Highland LLC.

Description: Request for Limited Waiver, *et al.* of Hecate Energy Highland LLC.

Filed Date: 5/23/19.

Accession Number: 20190523–5234.

Comments Due: 5 p.m. ET 6/3/19.

Docket Numbers: ER19–1987–000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 18–00088 to be effective 5/24/2019.

Filed Date: 5/24/19.
Accession Number: 20190524–5210.
Comments Due: 5 p.m. ET 6/14/19.
Docket Numbers: ER19–1988–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 15–00055 NPC and NPC Dry Lake 4th Amendment 05.24.19 to be effective 5/24/2019.
Filed Date: 5/24/19.
Accession Number: 20190524–5212.
Comments Due: 5 p.m. ET 6/14/19.
Docket Numbers: ER19–1989–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3490 AEP Energy Partners, Inc. NITSA and NOA to be effective 6/1/2019.
Filed Date: 5/28/19.
Accession Number: 20190528–5009.
Comments Due: 5 p.m. ET 6/18/19.
Docket Numbers: ER19–1991–000.
Applicants: Tampa Electric Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 21 w_City of Lakeland—Amendment to Exhibit A to be effective 6/1/2019.
Filed Date: 5/28/19.
Accession Number: 20190528–5060.
Comments Due: 5 p.m. ET 6/18/19.
Docket Numbers: ER19–1992–000.
Applicants: RE Gaskell West 2 LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective
5/29/2019.
Filed Date: 5/28/19.
Accession Number: 20190528–5097.
Comments Due: 5 p.m. ET 6/18/19.
Docket Numbers: ER19–1993–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Tariff Cancellation: Cancellation of Cost Based Power Sales Tariff to be effective 5/29/2019.
Filed Date: 5/28/19.
Accession Number: 20190528–5099.
Comments Due: 5 p.m. ET 6/18/19.
Docket Numbers: ER19–1994–000.
Applicants: The Connecticut Light and Power Company.
Description: Initial rate filing: NTE Connecticut, LLC ? Engineering Design and Procurement Agreement to be effective 5/28/2019.
Filed Date: 5/28/19.
Accession Number: 20190528–5102.
Comments Due: 5 p.m. ET 6/18/19.
Docket Numbers: ER19–1995–000.
Applicants: RE Gaskell West 2 LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 5/29/2019.
Filed Date: 5/28/19.
Accession Number: 20190528–5110.
Comments Due: 5 p.m. ET 6/18/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–11593 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2934–029]

New York State Electric & Gas Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.
b. Project No.: 2934–029.
c. Date filed: April 1, 2019.
d. *Applicant:* New York State Electric & Gas Corporation (NYSEG).
e. *Name of Project:* Upper Mechanicville Hydroelectric Project.
f. *Location:* The existing project is located on the Hudson River, in Saratoga and Rensselaer Counties, New York. The project does not occupy any federal lands.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Hugh J. Ives, Manager, NYSEG Hydro Operations, 89 East Avenue, Rochester, NY 14649; (585) 724–8209; *hugh.ives@avangrid.com.*
i. *FERC Contact:* Jody Callihan, (202) 502–8278 or *jody.callihan@ferc.gov.*
j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2934–029.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Upper Mechanicville Hydroelectric Project consists of: (1) A 700-foot-long concrete gravity dam with a crest elevation of 66.6 feet National Geodetic Vertical Datum of 1929 (NGVD29); (2) 3 spillway bays each extending 222 feet across the length of the dam and separated by a 7.5-foot to 10.5-foot-wide concrete pier, with each spillway bay containing 12 pneumatic Obermeyer crest gates that are 6 feet high; (3) a 1.8-mile-long impoundment with a 380-acre surface area and gross storage capacity of 10,735 acre-feet at a normal pool elevation of 72.6 feet NGVD29; (4) an intake channel with two reinforced guide walls and three 35-foot-diameter cofferdam walls constructed of sheet piling; (5) a 20-foot-wide and 7.5-foot-high intake bypass sluice gate; (6) a 105.5-foot-long by 122-foot-wide powerhouse containing two 12,780 horsepower Kaplan turbines and two Siemens-Allis generators each having a rated capacity of 8,265 kilowatts; (7) a tailrace approximately 1,200 feet long and 120 feet wide with a bi-level bottom designed to minimize cross-currents; (8) one 1.10-mile-long, 34.5-kilovolt transmission line; and (9) appurtenant facilities.

During the non-navigation season (typically from December 1 through April 30), NYSEG operates the project in a run-of-river (ROR) mode and maintains the impoundment at an elevation of 72.6 feet NGVD29. During the navigation season (typically May 1 through November 30), NYSEG

periodically spills water to lower the impoundment up to 3 feet below full pool, as directed by the New York State Canal Corporation, to accommodate navigation at lock C–3, and uses all available remaining inflow (that is not used to support navigation) for generation purposes. NYSEG proposes to continue operating the project as it does currently, to support both generation and navigation. In addition, NYSEG proposes to enhance fish passage at the project by: (1) Installing upstream passage for American eel (4 years post-license); (2) developing an agreement with the New York State Canal Corporation to modify lock operations to accommodate the upstream passage of blueback herring and American shad (commencing 2 years post-license); and (3) modifying the project's intake bypass sluice gate to provide an additional route of downstream fish passage from April 1 through November 30. The project currently generates an annual average of 88,537 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the Mechanicville District Public Library located at 190 North Main Street, Mechanicville, NY 12118 and the A.E. Diver Memorial Library located at 136 Main Street, Schaghticoke, NY 12154.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural Schedule:

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of motions to intervene and protests	July 2019.
Issuance of Ready for Environmental Analysis notice	October 2019.
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	December 2019.
Reply comments due	February 2020.
Commission Issues EA	April 2020.
Comments on EA	May 2020.
Modified terms and conditions due	July 2020.

Dated: May 28, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11595 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–173]

Duke Energy Carolinas, Llc; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2503–173.

c. *Date Filed:* April 24, 2019.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* Lake Keowee in Oconee County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kelvin Reagan, Manager, Lake Services Southern Region, Duke Energy, 526 S Church Street/EC12Q, Charlotte, NC 28202, (704) 382–9386, *kelvin.reagan@duke-energy.com.*

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 21, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2503–173. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must

also serve a copy of the document on that resource agency.

k. *Description of Request:* Duke Energy Carolinas, LLC proposes to issue a lease for the construction and operation of a non-project, residential marina within the project boundary that would serve the Timber Bay Property Owner's Association (Timber Bay Marina). Timber Bay Marina would occupy 1.43 acres of project lands and waters and would include 56 boat docking locations (*i.e.,* four cluster docks with six double slips and two end ties each). The marina proposal includes approximately 430 feet of riprap to be installed as shoreline stabilization.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 22, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11606 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3025–029]

Green Mountain Power Corporation; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. Type of Filing: Notice of Intent to File License Application for a Subsequent License and Commencing Pre-filing Process.

b. Project No.: 3025–029.

c. Dated Filed: March 29, 2019.

d. Submitted By: Green Mountain Power Corporation (Green Mountain Power).

e. *Name of Project:* Kelley's Falls Project.

f. *Location:* On the Piscataquog River in Hillsborough County, New Hampshire. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Jason Lisai, Director of Generation Operations, Green Mountain Power Corporation, 163 Acorn Lane, Colchester, VT 05446; phone at (802) 655–8723, or email at *Jason.Lisai@greenmountainpower.com.*

i. *FERC Contact:* Patrick Crile at (202) 502–8042 or email at *patrick.crile@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and (b) the New Hampshire State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Green Mountain Power as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 106 of the National Historic Preservation Act, and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act.

m. Green Mountain Power filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). Copies are also available by request from Mr. John Greenan of Green Mountain Power at (802) 770–2195 or via email at *John.Greenan@greenmountainpower.com.*

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests

should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3025–029.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so within 60 days of the date of this notice.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. The scoping process will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribe, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, June 27, 2019.
Time: 9:00 a.m.
Location: New Hampshire Institute of Politics Auditorium, Saint Anselm College, 100 St. Anselm Drive, Goffstown, NH 03102.
Phone: (603) 641–7000.

Evening Scoping Meeting

Date: Thursday, June 27, 2019.
Time: 7:00 p.m.
Location: New Hampshire Institute of Politics Auditorium, Saint Anselm College, 100 St. Anselm Drive, Goffstown, NH 03102.
Phone: (603) 641–7000.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The licensee and Commission staff will conduct an environmental site review of the project on Thursday, June 27, 2019, starting at 1:00 p.m. All participants should meet at the project's powerhouse, located at 10 Electric St., Manchester, NH 03102.

If you plan to attend the environmental site review, please contact Katie Sellers of Kleinschmidt Associates at (207) 416–1218, or via email at *Katie.Sellers@kleinschmidtgroup.com* on or before June 24, 2019, and indicate how many participants will be attending with you. Green Mountain Power's safety policies require that participants wear steel-toed safety shoes to enter the powerhouse.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: May 28, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11596 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–77–000]

Oklahoma Gas and Electric Company v. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on May 24, 2019, pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e and 825h and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2019), Oklahoma Gas and Electric Company (OG&E or Complainant) filed a formal complaint against Southwest Power Pool, Inc. (SPP or Respondent) requesting that the Commission rules, that if SPP requires OG&E to refund revenue credits for use of transmission facilities that OG&E sponsored during a historical period of approximately five and one half years from April, 2010 to September, 2015, it would violate its contractual commitments and tariff obligations to OG&E, and orders that SPP not seek refunds or unwind those payments, all as more fully explained in the complaint.

OG&E certifies that copies of the complaint were served on the contacts for SPP, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is 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.

Comment Date: 5 p.m. Eastern Time on June 13, 2019.

Dated: May 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–11591 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2420–054]

PacifiCorp; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 2420–054.

c. *Dated Filed:* March 29, 2019.

d. *Submitted By:* PacifiCorp.

e. *Name of Project:* Cutler Hydroelectric Project.

f. *Location:* On the Bear River near the city of Logan in Box Elder and Cache counties in Utah. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. Potential *Applicant Contact:* Eva Davies, Cutler Licensing Project Manager, PacifiCorp, 1407 West North Temple, Room 210, Salt Lake City, Utah 84115.

i. *FERC Contact:* Khatoon Melick at (202) 502–8433 or email at: *Khatoon.melick@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating PacifiCorp as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. PacifiCorp filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for download on PacifiCorp's project relicensing website at: *http://www.pacificorp.com/es/hydro/hl/cutler/index.html.*

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, you may send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2420–054.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by July 29, 2019.

q. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this notice, associated scoping meeting, and our scoping process will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Thursday, June 27, 2019 at 9:00 a.m.

Location: Riverwoods Conference Center, 615 S Riverwoods Parkway, Logan, UT 84321.

Phone Number: (435) 750–5151.

Evening Scoping Meeting

Date and Time: Thursday, June 27, 2019 at 7:00 p.m.

Location: Riverwoods Conference Center, 615 S Riverwoods Parkway, Logan, UT 84321.

Phone Number: (435) 750–5151.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review of the project on Wednesday, June 26, 2019, starting at 9:00 a.m. All participants should meet at Cutler Marsh Marina recreation site—also known as Valley View Marina—located on the west side of Cutler Reservoir on Highway 30, just west of the Highway 30 bridge over the reservoir. Driving directions: Starting at L.W.'s Truck Stop in Logan, Utah (southwest corner of 1000 W and 200 N), drive west on Highway 30 (also 200 N) approximately 5 miles. After crossing Cutler Reservoir, the Cutler Marsh Marina Recreation Site will be on the south side of the highway; turn left from the highway into the gravel parking lot. All participants are responsible for their own transportation. Recommended gear: Closed toe shoes, good for walking 1–2 miles in, hat, sunscreen, water bottle, binoculars (optional, for wildlife viewing). Anyone with questions about the site visit should contact Ms. Miriam Hugentobler with PacifiCorp at: (801) 652–8983. Lunch and extra water will be provided by PacifiCorp. For lunch RSVPs please contact Ms. Miriam Hugentobler at (801) 652–8983 or email her at: *cutlerlicense@gmail.com.*

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: May 28, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–11594 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1992–000]

RE Gaskell West 2 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 RE Gaskell West 2 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 June 17, 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: May 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–11590 Filed 6–3–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2019–0209; FRL–9994–89–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is given of a proposed consent decree in *Citizens for Clean Air, et al.* v. *Andrew Wheeler, et al.,* No. 2:18–cv–01803–TSZ (W.D. Wa.). On December 18, 2018, Citizens for Clean Air, a project of Alaska Community Action on Toxics, and Sierra Club (''Plaintiffs'') filed a complaint in the United States District Court for the Western District of Washington, alleging that the Administrator of the United States Environmental Protection Agency and the Regional Administrator of the Environmental Protection Agency Region 10 (''EPA'') failed to perform a non-discretionary duty to determine whether the State of Alaska has made an administratively complete state implementation plan (''SIP'') submission. The SIP submission at issue is required to meet the Serious nonattainment area plan requirements for the 2006 24-hour $PM_{2.5}$ NAAQS for the Fairbanks North Star Borough area. The proposed consent decree would establish a deadline for EPA to determine whether the State of Alaska has made the required SIP submission.

DATES: Written comments on the proposed consent decree must be received by July 5, 2019.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2019–0209, online at *www.regulations.gov* (EPA's preferred method). For comments submitted at *www.regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–5601; email address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

EPA designated the Fairbanks North Star Borough area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS on December 14, 2009. EPA initially classified the area as a ''Moderate'' nonattainment area, but later reclassified the area to ''Serious,'' effective June 9, 2017. Accordingly, the State of Alaska is required to make a new SIP submission to meet applicable statutory and regulatory requirements for a Serious area nonattainment area plan for this area.

The proposed consent decree would resolve a lawsuit filed by the Plaintiffs seeking to compel the EPA to take action under Clean Air Act section 110(k)(1)(B) to determine whether the State of Alaska has made an administratively complete SIP submission intended to meet the Serious nonattainment area plan requirements for the 2006 24-hour $PM_{2.5}$ NAAQS for the Fairbanks North Star Borough area.

Under the terms of the proposed consent decree, EPA shall sign a notice of final rulemaking making the required completeness determination no later than July 8, 2019. Thereafter, the EPA shall, within 15 business days, send the signed notice of final rulemaking making the completeness determination to the Office of **Federal Register** for review and publication.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2019–0209) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 23, 2019.

Gautam Srinivasan,

Acting Associate General Counsel.

[FR Doc. 2019–11618 Filed 6–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0008; FRL–9993–64–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Consolidated Superfund Information Collection Request (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Consolidated Superfund Information Collection Request (EPA ICR Number 1487.14, OMB Control Number 2050–0179), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2019. Public comments were previously requested via the **Federal Register** on September 24, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 5, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–SFUND–2004–0008, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, Office of Superfund Remediation and Technology Innovation, Assessment and Remediation Division, (5202P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–603–8835; fax number: 703–603–9146; email address: *singer.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR addresses the following: (1) The collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for state, federally-recognized Indian tribal governments, and political subdivision response actions; (2) the application of the Hazard Ranking System (HRS) by states as outlined by CERCLA section 105 that amends the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to include criteria prioritizing releases throughout the United States before undertaking remedial action at uncontrolled hazardous waste sites; and (3) the remedial portion of the Superfund program as specified in CERCLA and the NCP. For cooperative agreements and Superfund state contracts for Superfund response actions, the information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how federal funds are being utilized. EPA requires this information to meet its federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities'' and under 40 CFR part 35, ''State and Local Assistance.'' For the Superfund site evaluation and the Hazard Ranking System, the states will apply the HRS by identifying and classifying those releases or sites that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities

List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions. For the NCP information collection, some community involvement activities covered by this ICR are not required at every site (*e.g.,* Technical Assistance Grants) and depend very much on the community and the nature of the site and cleanup. All community activities seek to involve the public in the cleanup of the sites, gain the input of community members, and include the community's perspective on the potential future reuse of Superfund NPL sites. Community involvement activities can enhance the remedial process and increase community acceptance and the potential for productive and beneficial reuse of the sites.

Form Numbers: 6200–11.

Respondents/affected entities: State, Local or Tribal Governments; Communities; U.S. Territories.

Respondent's obligation to respond: Required to obtain benefits (40 CFR part 35; CERCLA section 105, 40 CFR part 300).

Estimated number of respondents: 13,182 (total).

Frequency of response: Annually.

Total estimated burden: 196,557 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $463,497 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 679,972 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an overall decrease in the number of respondents and responses for the Superfund Site Evaluation and Hazard Ranking System, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions, and for the National Oil and Hazardous Substances Pollution Contingency Plan.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–11531 Filed 6–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9994–43–OMS]

Good Neighbor Environmental Board; Notification of Federal Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board will hold a public meeting on Thursday, June 27 and Friday, June 28, 2019 in Imperial Beach, California. The meeting is open to the public.

DATES: The Good Neighbor Environmental Board will hold an open meeting on Thursday, June 27 from 9 a.m. (registration at 8:30 a.m.) to 5:30 p.m. The following day, Friday, June 28, the Board will meet from 8:30 a.m. (registration at 8 a.m.) until 2 p.m.

Purpose of Meeting: The purpose of this meeting is to begin discussion on the Good Neighbor Environmental Board's next report. Local officials and representatives of Federal departments and agencies will be making presentations and giving an overview of regulatory and permitting processes to promote development of new energy infrastructure in the U.S.—Mexico border region.

ADDRESSES: The meeting will be held at the Marriott Pier South, 800 Seacoast Drive, Imperial Beach, California. The meeting is open to the public, with limited seating on a first-come, first-serve basis.

General Information: The agenda will be available at *http://www2.epa.gov/faca/gneb.* General information about the Board can be found on its website at *http://www2.epa.gov/faca/gneb.* If you wish to make oral comments or submit written comments to the Board, please contact Ann-Marie Gantner at least five days prior to the meeting. Written comments should be submitted to Ann-Marie Gantner at *gantner.ann-marie@epa.gov.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Ann-Marie Gantner at (202) 564–4330 or email at *gantner.ann-marie@epa.gov.* To request accommodation of a disability, please contact Ann-Marie Gantner at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 19, 2019.

Ann-Marie Gantner,

Program Analyst.

[FR Doc. 2019–11619 Filed 6–3–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 19–452]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting of the North American Numbering Council (NANC). At this meeting, the NANC will consider and vote on a recommendation from its Numbering Administration Oversight Working group for the annual NANP budget and contribution factor. In addition, the Interoperable Video Calling Working Group will report on its progress in developing recommendations for the NANC's future consideration.

The NANC meeting is open to the public. The FCC will accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio coverage of the meeting. Other reasonable accomodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau @ (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237.

More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.* You may also contact Marilyn Jones, DFO of the NANC, at *marilyn.jones@fcc.gov,* or (202) 418–2357, Michelle Sclater, Alternate DFO, at *michelle.sclater@fcc.gov,* or (202) 418–0388; or Carmell Weathers, Special Assistant to the DFO, at *carmell.weathers@fcc.gov,* or (202) 418–2325.

DATES: Thursday, June 20, 2019, 10:00 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW, Room 5–C162, Washington, DC 20554 or emailed to *Carmell.Weathers@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Carmell Weathers at (202) 418–2325 or *Carmell.Weathers@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 19–452 released May 22, 2019. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW, Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the internet at *http://www.bcpiweb.com.* It is available on the Commission's website at *http://www.fcc.gov.*

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the Designated Federal Officer (DFO).

Federal Communications Commission.

Marilyn Jones,

Senior Counsel for Number Administration, Wireline Competition Bureau.

[FR Doc. 2019–11627 Filed 6–3–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1223]

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, Office of the Managing Director, at (202) 418–2991, or email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1223.

OMB Approval Date: April 23, 2019.

OMB Expiration Date: April 30, 2022.

Title: Payment Instructions from the Eligible Entity Seeking Reimbursement from the TV Broadcaster Relocation Fund.

Form No.: FCC Form 1876.

Respondents: Business or other for-profit entities, Not for profit institutions and State, Local or Tribal Government.

Number of Respondents and Responses: 2,500 respondents; 2,500 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 12,500 hours.

Total Annual Cost: No Cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96 (Spectrum Act) section 6403(a)(1) and Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Public Law 115–141, Div. P, (RAY BAUM'S Act) section 1452.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs ''reasonably incurred'' in relocating to new channels assigned in the repacking process and Multichannel Video Programming Distributors (MVPDs) for costs reasonably incurred in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid. RAY BAUM'S Act expands the program to include reimbursement to TV translator stations, low power TV stations, and FM radio stations. This information collection is necessary for eligible entities to instruct the Commission on how to pay the approved amounts the entities requested, and for the entities to make certifications that reduce the risk of waste, fraud, abuse and improper payments.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–11549 Filed 6–3–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1228]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 5,

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, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1228.

Title: Connect America Fund—High Cost Portal Filing.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents and Responses: 1,599 unique respondents; 3,730 responses.

Estimated Time per Response: 8 hours–60 hours.

Frequency of Response: On occasion, quarterly reporting requirements, annual reporting requirements, one-time reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 68,607 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: We note that USAC must preserve the confidentiality of certain data obtained from respondents; must not use the data except for purposes of administering the universal service programs or other purposes specified by the Commission; and must not disclose data in company-specific form unless directed to do so by the Commission. Respondents may request materials or information submitted to the Commission or the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting approval for this revised information collection. In March 2016, the Commission adopted an order reforming its universal service support program in areas served by rate-of-return carriers. Connect America Fund et al., WC Docket Nos. 10–90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16–33 (*2016 Rate-of-Return Order*). In May 2016, the Commission adopted rules to implement a competitive bidding process for Phase II of the Connect America Fund. Connect America Fund et al., WC Docket Nos. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 16–64 (*Phase II Auction Order*). In August 2016, the Commission adopted a plan tailored to certain carriers, both fixed and mobile, serving Alaska. Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 16–115 (*Alaska Plan Order*). In January 2017 the Commission adopted an order which granted New York State waiver of the Connect America Phase II auction program rules, subject to certain conditions. Connect America Fund et al., WC Docket Nos. 10–90 et al., FCC 17–2 (*New York Auction Order*). Also, in December 2018, the Commission adopted reforms that included additional offers of model-based support and increased broadband deployment obligations. Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, FCC 18–176 (*2018 Rate-of-Return Order*).

This information collection addresses the requirement that certain carriers with high-cost reporting obligations must file information about their locations which meet their broadband deployment public interest obligations via an electronic portal (''portal''). The *2016 Rate-of-Return Order* required that the Universal Service Administrative Company (USAC) establish the portal so that carriers could file their location data with the portal starting in 2017. The *2016 Rate-of-Return Order* required all recipients of Phase II model-based support and rate-of-return carriers to submit geocoded location data and related certifications to the portal. Recipients of Phase II model-based support had been required to file such information in their annual reports due by July 1. The *Phase II Auction Order, Alaska Plan Order,* and *New York Auction Order* require carriers to build-out networks capable of meeting their public interest obligations and report, to an online portal, locations to which auction winners had deployed such networks. The *Alaska Plan Order* also made portal reporting requirements for carriers to submit fiber/microwave middle-mile network maps. This information collection also addresses the new additional offers of model-based support and increased broadband deployment obligations, and other improvements to the portal. With the new additional offers, there will be more carriers subject to the model-based deployment milestones and fewer carriers remaining on legacy support.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–11534 Filed 6–3–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1262]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval, for a new, one-time information collection pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

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

OMB Control Number: 3060–1262.

OMB Approval Date: May 23, 2019.

OMB Expiration Date: May 31, 2022.

Title: Incumbent 39 GHz Licensee Short-Form Application.

Form Number: FCC Form 175–A.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 16 respondents; 16 responses.

Estimated Time per Response: 30 minutes.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 8 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154, 254, and 303(r) of the Communications Act, as amended, 47 U.S.C. 4, 254, 303(r).

Nature and Extent of Confidentiality: Information collected pursuant this information collection will be made available for public inspection, and the Commission is not requesting that respondents submit confidential information in response to this information collection. To the extent a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: In its 2016 *Spectrum Frontiers Report and Order* (FCC 16–89), the Commission adopted Upper Microwave Flexible Use Service (UMFUS) rules for the 28 GHz, Upper 37 GHz, and 39 GHz bands to make available millimeter wave spectrum for 5G. In its 2017 *Spectrum Frontiers Second Report and Order* (FCC 17–152), the Commission expanded the UMFUS rules to cover the 24 GHz and 47 GHz bands. In its December 2018 *Fourth Report and Order* (FCC 18–180), the Commission established an incentive auction that promotes the flexible-use wireless service rules that the Commission has adopted for the Upper 37 GHz, 39 GHz, and 47 GHz bands and, among other things, adopted modified band plans for these bands.

There are currently a number of existing licenses in the 39 GHz band that do not fit geographically into the Commission's new 39 GHz band plan, resulting in ''encumbered'' licenses in this band. The Commission will use the incentive auction process to resolve the difficulties presented by these encumbrances and the need for existing 39 GHz licenses to be transitioned efficiently to the new band plan and possibly to new service areas. Pursuant to the reconfiguration process adopted in the *Fourth Report and Order,* prior to the incentive auction, the Commission will offer each incumbent 39 GHz licensee a reconfiguration of its existing 39 GHz licenses that conforms more closely with the Commission's new band plan and service areas. Each incumbent can then choose to commit to (1) have its existing 39 GHz licenses modified based on the Commission's reconfiguration proposal; or (2) have its licenses modified based on an alternative reconfiguration proposed by the incumbent (provided it satisfies certain specified conditions); or (3) relinquish its existing spectrum usage rights in exchange for an incentive payment. An incumbent 39 GHz licensee will submit contact and related information and certifications on FCC Form 175–A which will be used by the Commission to enable the incumbent licensee to make its commitment to either accept modification of its 39 GHz spectrum holdings (either as proposed by the Commission or an acceptable alternate) or to relinquish its existing spectrum usage rights in exchange for an incentive payment.

The Commission received approval from OMB for the information collection requirements contained in OMB 3060–1262 on May 23, 2019.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–11533 Filed 6–3–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, June 6, 2019 at 2:00 p.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Correction and Approval of Minutes for April 25, 2019.

Draft Advisory Opinion 2019–07: Area 1 Security, Inc.

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202)694–1040, at least 72 hours prior to the meeting date.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2019–11651 Filed 5–31–19; 11:15 am]

BILLING CODE 6715–01–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 notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 20, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Anderson W. Chandler Trust A Indenture dated July 25, 1996, and Cathleen Chandler Stevenson, individually, and as trustee, both of Dallas, Texas;* to retain shares of Fidelity Kansas Bankshares, Inc., Topeka, Kansas and thereby retain shares of Fidelity State Bank, Topeka, Kansas, and be approved as members of the Anderson W. Chandler Family Control Group. In addition, *The Ronald N. and Colette C. Gaches Revocable Trust dated June 16, 2016, and Ronald N. Gaches and Colette C. Gaches as trustees, all of Lawrence, Kansas; Cynthia Debra Chandler, Leawood, Kansas; Corliss Chandler Miller Trust dated September 10, 1984, and Corliss Chandler Miller as trustee, both of Prairie Village, Kansas; Lauren C. Stevenson Borgen, Dallas, Texas; Sophia L. Halma, Wheat Ridge, Colorado; Katie Leigh Gaches, Lawrence, Kansas; Jordan C. Gaches, Lawrence, Kansas; Elizabeth Eileen Roberts, Chicago, Illinois; Jeffrey Collins Miller, Charlotte, North Carolina; Spencer C. Hoad, Baltimore, Maryland; David A. Stevenson, Katy, Texas; and Stuart C. Miller, Overland Park, Kansas;* to retain voting shares of Fidelity as members of the Anderson W. Chandler Family Control Group.

Board of Governors of the Federal Reserve System, May 30, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–11617 Filed 6–3–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0029; Docket No. 2019–0003; Sequence No. 13]

Information Collection; Extraordinary Contractual Action Requests

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision concerning extraordinary contractual action requests.

DATES: DoD, GSA, and NASA will consider all comments received by August 5, 2019.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0029, Extraordinary Contractual Action Requests.

Instructions: All items submitted must cite Information Collection 9000–0029. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, at 202–219–0202 or email at *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Number, Title, and any Associated Form(s)

9000–0029, Extraordinary Contractual Action Requests.

B. Needs and Uses

FAR subpart 50.1 prescribes policies and procedures that allow contracts to be entered into, amended, or modified in order to facilitate national defense under the extraordinary emergency authority granted under 50 U.S.C. 1431 *et seq.* and Executive Order (E.O.) 10789 dated November 14, 1958, *et seq.*

This authority applies to the Government Printing Office; the Department of Homeland Security; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the Department of Defense; the Department of the Army; the Department of the Navy; the Department of the Air Force; the Department of the Treasury; the Department of the Interior; the Department of Agriculture; the Department of Commerce; and the Department of Transportation. Also included is the Department of Energy for functions transferred to that Department from other authorized agencies and any other agency that may be authorized by the President.

In order for a contractor to be granted relief under the FAR, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

FAR 50.103–3 specifies the minimum information that a contractor must include in a request for contract adjustment in accordance with FAR 50–103–1 and 50.103–2.

FAR 50–103–4 sets forth additional information that the contracting officer or other agency official may request from the contractor to support any request made under FAR 50.103–3.

FAR 50.104–3 sets forth the information that the contractor shall include in a request for the indemnification clause to cover unusually hazardous or nuclear risks.

FAR 52.250–1, Indemnification under Public Law 850804, requires in paragraph (g) that the contractor shall promptly notify the contracting officer of any claim or action against, or loss by, the contractor or any subcontractors that may reasonably to involve indemnification under the clause.

The information is used by the Government to determine if relief can be granted under FAR and to determine the appropriate type and amount of relief.

C. Annual Reporting Burden

Respondents: 28.

Total Annual Responses: 164.

Obtaining Copies: Requester may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: May 30, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–11622 Filed 6–3–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 84 FR 14739–14381, dated April 10, 2019) is amended to reflect the reorganization of the Office of the Associate Director for Policy and Strategy, Office of the Director, Centers for Disease Control and Prevention. This reorganization abolishes the Office of Health System Collaboration and establishes the Office of Population Health and Healthcare.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Office of the Associate Director for Policy and Strategy (CAQ),* and insert the following:

Office of the Associate Director for Policy and Strategy (CAQ). The mission of CDC's Office of the Associate Director for Policy and Strategy (OADPS) is to bring about, define and evaluate policies and strategies that result in demonstrable improvements in public health—globally and at the federal, state, and local levels. In carrying out its mission, OADPS: (1) Provides advice to CDC leadership in developing agency policies, programs, and strategies; (2) creates and maintains partnerships to implement policies, programs, and

strategies; (3) monitors and evaluates programs to improve the public's health; and (4) ensures the agency's scientific credibility, reputation, and needs are respected and supported by policy makers, program partners, and stakeholders.

Delete in its entirety the functional statement for the *Office of the Director (CAQ1),* and insert the following:

Office of the Director (CAQ1). (1) Provides strategic advice to CDC leadership on agency direction and drives CDC towards actions to reduce leading preventable causes of morbidity and mortality; (2) ensures effectiveness of policy, program, performance, and strategy across the agency; (3) builds capacity throughout CDC for policy, program, performance, and strategy; (4) leads the development and management of policy and programmatic agendas with federal agencies and other organizations; (5) establishes and maintains strategic partnerships with key organizations and individuals working on public health policies and programs.

Delete in its entirety the title and functional statement for the *Office of Health System Collaboration (CAQ12).*

Delete in its entirety the functional statement for the *Policy Research, Analysis, and Development Office (CAQB),* and insert the following:

Policy Research, Analysis, and Development Office (CAQB). (1) Identifies and assists CDC leadership in informing policy at multiple levels (*e.g.,* federal, state, local, global, and private sector); (2) gathers and disseminates knowledge about statutes, regulations, and sub-regulatory guidance that can increase the policy impact of CDC programs; (3) conducts analyses, including regulatory, legal, and economic and develops strategies for CDC policy priorities; (4) supports policy implementation through the provision of expertise, guidance, reviews, and tools; (5) monitors and evaluates the impact of CDC policies; (6) builds policy analysis and development capacity within CDC and the larger public health community; (7) leads CDC's public health policy research agenda; (8) manages selected partner cooperative agreements and contracts that focus on policy; and (9) incubates innovative programs that emerge from policy priorities identified by CDC leadership.

Delete in its entirety the *Program Performance and Evaluation Office (CAQD)* and insert the following:

Program Performance and Evaluation Office (CAQD). (1) Serves as an advisor to CDC leadership on program effectiveness to guide science, policy, and programmatic efforts; (2) provides agency-wide direction, standards, and technical assistance for program planning, performance and accountability; (3) supports the harmonization of performance measurement, accountability, and program evaluation; (4) guides the collection and analysis of economic, performance, and accountability data; (5) facilitates continuous improvement based on program evaluation and performance measurement; (6) manages the CDC evaluation fellowship; (7) provides economic evaluation support to CDC leadership; (8) drives short-term and long-term strategic program planning; (9) supports evidence-driven program design with expertise, analyses, and tools; (10) promotes standardization of shared programmatic activities to improve efficiency; (11) coordinates action planning for high impact initiatives; and (12) facilitates information sharing and collaboration between programs and CDC leadership.

After the functional statement for the *Program Performance and Evaluation Office (CAQD),* insert the following:

Office of Population Health and Healthcare (CAQE). (1) Engages multi-sectoral partners (*e.g.*, private sector, non-profit, transportation, housing, healthcare providers and insurance plans, foundations) to create collaborative opportunities that improve health outcomes; (2) uses data, subject matter expertise and convening power to inform the development of policies, programs and tools; (3) provides agency wide guidance on approaches and partners that can help achieve CDC aims; (4) builds capacity to use CDC data analysis and interpretation expertise to explore gaps in health outcomes and develop population health/healthcare solutions; and (5) creates linkages and synergies between CDC programs to maximize population health impact.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–11548 Filed 6–3–19; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10697]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

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 August 5, 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 *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–10697 Medicare Coverage of Items and Services for Coverage With Evidence Development

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: New collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Coverage of Items and Services for Coverage with Evidence Development; *Use:* CED is a paradigm whereby Medicare covers items and services on the condition that they are furnished in the context of approved clinical studies or with the collection of additional clinical data. In making coverage decisions involving CED, CMS decides after a formal review of the medical literature to cover an item or service only in the context of an approved clinical study or when additional clinical data are collected to assess the appropriateness of an item or service for use with a particular beneficiary. When an NCD requires CED under 1862(a)(1)(E), it is because the available evidence about a particular item or service is insufficient to support coverage outside the context of a well-designed clinical research study. Sponsors could build interim analyses and final analyses into their study design and communicate these results to CMS.

Section 1142 of the Act describes the authority of the Agency for Healthcare Research and Quality (AHRQ) to conduct and support research on outcomes, effectiveness, and appropriateness of services and procedures to identify the most effective and appropriate means to prevent, diagnose, treat, and manage diseases, disorders, and other health conditions. That section includes a requirement that the Secretary assure that AHRQ research priorities under Section 1142 appropriately reflect the needs and priorities of the Medicare program.

The coordination of AHRQ priorities under section 1142 with the needs and priorities of the Medicare program is accomplished through direct collaboration between the AHRQ and CMS. AHRQ reviews all CED NCDs established under Section 1862(a)(1)(E) of the Act. Consistent with section 1142, AHRQ also indicates its support for clinical research studies that CMS determines address the CED questions and meet the general standards for CED studies. In order for CMS (or its designated entity) to determine if the Medicare coverage criteria are met, as described in our regulations, CMS (or its designated entity) must review the study protocol and supporting materials, as needed. *Form Number:* CMS–10697 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 15,000. (For policy questions regarding this collection contact Xiufen Sui at 410–786–3136.)

Dated: May 30, 2019,

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–11630 Filed 6–3–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1707]

Teva Pharmaceuticals USA, Inc., et al.; Withdrawal of Approval of Five Abbreviated New Drug Applications for Pemoline Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the approval of five abbreviated new drug applications (ANDAs) for products containing pemoline. The holders of the applications requested withdrawal of the applications and have waived their opportunity for a hearing.

DATES: Approval is withdrawn as of June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: FDA approved the following ANDAs for pemoline tablets for the conditions of use in the labeling of new drug application (NDA) 016832, the reference listed drug on which these ANDAs relied:

- ANDA 075030 approved on January 29, 1999
- ANDA 075287 approved on September 18, 2000
- ANDA 075595 approved on February 28, 2000

FDA approved the following ANDAs for pemoline chewable tablets for the conditions of use in the labeling of NDA 017703, the reference listed drug on which these ANDAs relied:

- ANDA 075555 approved on February 18, 2000
- ANDA 075678 approved on July 26, 2000

On October 24, 2005, FDA issued a *Postmarket Drug Safety Information for Healthcare Professionals* communication stating its conclusion that the overall liver toxicity risk of CYLERT (NDAs 016832 and 017703) and generic pemoline products outweighed the benefits of these products (*https://wayback.archive-it.org/7993/20171114124349/https://www.fda.gov/DrugsDrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/*

ucm126461.htm). The applicants and other holders of approved applications for pemoline products ceased marketing the products at that time.

On August 10, 2018, the applicants listed in the table below requested that FDA withdraw approval of the pemoline ANDAs listed in the table under § 314.150(d) (21 CFR 314.150(d)), and, in doing so, waived their opportunity for a hearing. For the reasons discussed above, which the applicants do not dispute in their withdrawal request letters, and pursuant to the applicants' requests, FDA is withdrawing approval of the ANDAs listed in the table, and all amendments and supplements thereto, under § 314.150(d). Tablet strengths listed in the table below include all strengths FDA has identified as being previously approved under these ANDAs. In each case, approval of the entire application is withdrawn, including any strengths inadvertently missing from the table. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d), respectively).

Application No.	Drug	Applicant
ANDA 075030	Pemoline Tablets, 18.75 mg, 37.5 mg, and 75 mg	Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 075287	Pemoline Tablets, 18.75 mg, 37.5 mg, and 75 mg	Watson Laboratories, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 075555	Pemoline Chewable Tablets, 37.5 mg	Teva Pharmaceuticals USA, Inc.
ANDA 075595	Pemoline Tablets, 18.75 mg, 37.5 mg, and 75 mg	Actavis Elizabeth LLC, 425 Privet Rd., Horsham, PA 19044.
ANDA 075678	Pemoline Chewable Tablets, 37.5 mg	Do.

Dated: May 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–11519 Filed 6–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0049]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0732. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reporting Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke Under the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0732—Extension

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act), enacted on June 22, 2009, amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) and provided FDA with the authority to regulate the manufacture, marketing, and distribution of cigarettes, cigarette tobacco, roll-your-own (RYO) tobacco, and smokeless tobacco products to protect the public health and to reduce tobacco use by minors. The Tobacco Control Act also gave FDA the authority to issue regulations deeming other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the FD&C Act (section 901(b) of the FD&C Act (21 U.S.C. 387a(b))).

In accordance with that authority, on May 10, 2016, FDA issued a final rule deeming all products that meet the statutory definition of tobacco product, except accessories of newly deemed tobacco products, to be subject to FDA's tobacco product authority (final deeming rule) (81 FR 28974).

Chapter IX of the FD&C Act now applies to newly regulated products, including sections 904(a)(3) and (c)(1) (21 U.S.C. 387d(a)(3) and (c)(1)). Section 904(a)(3) of the FD&C Act requires the submission of an initial report from each tobacco product manufacturer or importer, or agents thereof, listing all constituents, including smoke constituents as applicable, identified as a harmful and potentially harmful constituent (HPHC) to health by FDA. Reports must be by brand and by quantity in each brand and subbrand. We note that for cigarettes, smokeless tobacco, cigarette filler, and RYO tobacco products, this initial reporting was completed in 2012.

Section 904(c)(1) of the FD&C Act provides that manufacturers of tobacco products not on the market as of June 22, 2009, must also provide the information reportable under section 904(a)(3) at least 90 days prior to introducing the product into interstate commerce.[1]

FDA has taken several steps to identify HPHCs to be reported under section 904 of the FD&C Act, including issuing a guidance discussing FDA's current thinking on the meaning of the

[1] Note that section 904(c)(1) testing and reporting requirements are separate from the requirements that must be satisfied before a new tobacco product (sections 905 and 910 of the FD&C Act (21 U.S.C. 387e and 387j)), or modified risk tobacco product (section 911 of the FD&C Act (21 U.S.C. 387k)) may be marketed.

term ''harmful and potentially harmful constituent'' in the context of implementing the HPHC list requirement under section 904(e) of the FD&C Act (76 FR 5387, January 31, 2011, revised guidance issued August 2016). The guidance is available on the internet at *https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm241339.htm.* The current established list of HPHCs also is available on the internet at *https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM297828.pdf* (77 FR 20034, April 3, 2012).

The purpose of the information collection is to collect statutorily mandated information regarding HPHCs in tobacco products and tobacco smoke, by brand and by quantity in each brand and subbrand.

To facilitate the submission of HPHC information, Forms FDA 3787a, 3787b, and 3787c for cigarettes, smokeless tobacco products, and RYO tobacco products, respectively, in both paper and electronic formats, are available. Additionally, FDA is developing forms to facilitate the submission of HPHC information for the newly deemed tobacco products. We intend to model these forms on the current HPHC reporting forms (*i.e.,* Forms FDA 3787a, 3787b, and 3787c). A proposed information collection for newly deemed products will be published in a separate **Federal Register** notice, and we will solicit comments on that collection at that time.

Manufacturers or importers, or their agents, may submit HPHC information either electronically or in paper format. The FDA eSubmitter tool provides electronic forms to streamline the data entry and submission process for reporting HPHCs for cigarettes, smokeless tobacco products, and RYO tobacco products. Users of eSubmitter may populate an FDA-created Excel file and import data into eSubmitter. Whether respondents decide to submit reports electronically or on paper, each form provides instructions for completing and submitting HPHC information to FDA. The forms contain fields for company information, product information, and HPHC information.

In the **Federal Register** of January 31, 2019 (84 FR 744), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment that referenced ingredient reporting; however, that comment is nonresponsive to this information collection, which specifically covers HPHCs. FDA notes that this information collection relates to section 904(a)(3) of the FD&C Act, which requires each tobacco product manufacturer or importer, or an agent, to report a listing of all constituents, including smoke constituents as applicable, identified by FDA as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting for Section 904(c)(1) Products					
1. Reporting of Manufacturer/Importer Company and Product Information by Completing Submission Forms					
Cigarette	67	0.67	45	1.82	82
RYO	46	0.033	1.5	0.43	1
Smokeless	42	0.54	23	0.63	14
Total					97
2. Testing of HPHC Quantities in Products					
Cigarette Filler and RYO	46	0.033	1.5	9.42	14
Smokeless	42	0.54	23	12.06	277
Total					291
3. Testing of HPHC Quantities in Mainstream Smoke					
Cigarette: ISO Regimen	67	0.67	45	23.64	1,064
Cigarette: Health Canada Regimen	67	0.67	45	23.64	1,064
Total					2,128
Total Section 904(c)(1) Reporting Burden Hours					2,516

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden for this collection of information is estimated to be 2,516 hours. The burden estimate for this collection of information includes the time it will take to read the instructions, test the products, and prepare the HPHC report.

In arriving at this burden estimate, FDA estimated the number of tobacco products to be reported under the requirements of section 904(c)(1) of the FD&C Act annually to FDA.

Section 1 of table 1 estimates that 155 respondents (67 cigarette manufacturers or importers, 46 RYO tobacco manufacturers, 42 smokeless manufacturers) will submit 97 HPHC reports annually. This section addresses the time required for manufacturers and importers (or their agents), who must report their product information to FDA under section 904(c)(1) of the FD&C Act at least 90 days prior to delivery for introduction into interstate commerce for all new products, to report their company information to FDA through the use of the electronic portal or paper forms.

The company information reported includes: Company name; mailing address; telephone and Fax numbers; FDA Establishment Identifier number;

Data Universal Numbering System number; and point of contact name, mailing address, and telephone and Fax numbers, as applicable. It also addresses the time required for manufacturers and importers to report their product information by entering certain testing information into the electronic or paper forms.

The product information includes: Brand and subbrand name; unique product identification number; type of product identification number; product category and subcategory; and mean weight and standard deviation of tobacco in product.

We estimate that the burden to enter both the company and product information is no more than 1.82 hours for cigarettes, 0.43 hours for RYO, and 0.63 hours for smokeless tobacco products regardless of whether the paper or electronic Form FDA series 3787 is used. The time to report per tobacco product types varies because the number of HPHCs varies by tobacco product category.

The estimated number of responses under section 904(c)(1) is based on FDA's experience and the past 3 years' actual responses to FDA under this provision of the FD&C Act for statutorily regulated products.

Section 2 of table 1 estimates that 88 respondents (46 cigarette filler and RYO tobacco manufacturers and importers and 42 smokeless manufacturers) will test quantities of HPHCs in an average of 24.5 products annually. This section addresses the time required for manufacturers and importers (or their agents) who must test HPHC quantities in products. The burden estimates include the burden to test the tobacco products, draft testing reports, and submit the report to FDA. The total expected burden for this section is 291 hours.

Section 3 of table 1 addresses the time required for manufacturers and importers to test quantities for HPHCs in cigarette smoke. The burden estimates include: The burden to test the number of replicate measurements; test date range; manufacture date range; extraction method; separation method; detection method; and mean quantity and standard deviation of HPHCs and includes the burden to test the tobacco products, draft testing reports, and submit the report to FDA. The annual burden reflects our estimate of the time it takes to test the tobacco products (*i.e.,* carry out laboratory work). The burden estimate assumes that manufacturers and importers report HPHC quantities in cigarette mainstream smoke according to the two smoking regimens. The total expected burden is 2,128 hours for this section.

The total estimated burden for this information collection is 2,516 hours and 139 responses.

Our estimated burden for the information collection reflects an overall decrease of 2,125 hours and a corresponding decrease of 142 responses. We attribute this decrease to updated information on the number of submissions we received over the last few years.

Dated: May 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–11526 Filed 6–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–2131]

Evaluating Alternate Curricula for the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Evaluating Alternate Curricula for the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.'' The draft guidance, when finalized, will provide recommendations on the factors that covered farms should consider if they are selecting an alternate curriculum training to meet the requirements of the ''Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' (Produce Safety Rule) and for educators when developing or evaluating alternate curricula.

DATES: Submit either electronic or written comments on the draft guidance by October 2, 2019 to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–2131 for ''Evaluating Alternate Curricula for the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Fazila Shakir, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1355.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Evaluating Alternate Curricula for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Guidance for Industry.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

The Produce Safety Rule established science-based minimum standards for the safe growing, harvesting, packing, and holding of produce grown for human consumption. Subpart C of the rule includes the specific requirements for personnel qualifications and training, including the requirement for at least one supervisor or responsible party from a farm to successfully complete food safety training at least equivalent to that received under the standardized curriculum recognized as adequate by FDA (§ 112.22(c) (21 CFR 112.22(c))). For farms covered by the Produce Safety Rule, version 1.1 of the standardized curriculum developed by the Produce Safety Alliance is adequate as the standardized curriculum in § 112.22(c). The purpose of this draft guidance is to provide recommendations on the factors that covered farms should consider if they are using an alternate curriculum training to satisfy the requirements of § 112.22(c) and for educators when developing or evaluating alternate curricula.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/food/guidance-regulation-food-and-dietary-supplements/guidance-documents-regulatory-information-topic-food-and-dietary-supplements* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: May 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–11603 Filed 6–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of vouchers as well as the approval of products redeeming a voucher. FDA has determined that MAYZENT (siponimod) approved March 26, 2019, meets the redemption criteria.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9858, email: *althea.cuff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that MAYZENT (siponimod), approved March 26, 2019, meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about MAYZENT (siponimod) approved March 26, 2019, go to the ''*Drugs@FDA*'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: May 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–11522 Filed 6–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0013]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Sanitary Transportation of Human and Animal Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0773. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Sanitary Transportation of Human and Animal Food—21 CFR 1.900

OMB Control Number 0910–0773—Extension

This information collection supports FDA regulations regarding the sanitary transportation of human and animal food. The regulations are intended to focus on preventing food safety problems throughout the food chain and were issued under the Sanitary Food Transportation Act of 2005 (2005 SFTA), and the FDA Food Safety Modernization Act, enacted in 2011. The 2005 SFTA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), in part, by creating section 416 (21 U.S.C. 350e), which directs us to issue regulations to require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use prescribed sanitary transportation practices to ensure that food is not transported under conditions that may render the food adulterated. Section 416 also directs that we prescribe appropriate human and animal food transportation practice requirements relating to: (1) Sanitation; (2) packaging, isolation, and other protective measures; (3) limitations on the use of vehicles; (4) information to be disclosed to carriers and to manufacturers; and (5) recordkeeping.

In addition, the 2005 SFTA created section 402(i) of the FD&C Act (21 U.S.C. 342(i)), which provides that food that is transported or offered for transport by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food under conditions that are not in compliance with the regulations issued under section 416 is adulterated and section 301(hh) of the FD&C Act (21 U.S.C. 331(hh)), which prohibits the failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the regulations issued under section 416.

The 2005 SFTA also amended section 703 of the FD&C Act (21 U.S.C. 373) by providing that a shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by FDA, permit the officer or employee, at reasonable times, to have access to and to copy all records that are required to be kept under the regulations issued under section 416.

Accordingly, we issued regulations in 21 CFR 1.900 that establish requirements for the sanitary transportation of human and animal food. The regulations include certain recordkeeping requirements, procedures and information collection for respondents who wish to request a waiver for any requirement, as well as third-party disclosures regarding sanitary specifications.

In the **Federal Register** of February 20, 2019 (84 FR 5087), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1.912; Record retention	1,502,032	1	1,502,032	0.083 (5 minutes)	124,669

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate an annual recordkeeping burden of 124,669 hours, consistent with the estimate found in the Final Regulatory Impact Analysis for the 2016 final rule and used to establish the information collection. This assumes 1,502,032 workers will spend an average of 5 minutes on activities related to the record retention requirements under 21 CFR 1.912. We expect these activities will likely include documenting procedures and training, as well as sanitary transportation operations and specification requirements.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1.914; Waiver petitions	2	1	2	24	48

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate one waiver petition from each of two firms will be submitted and respondents will spend 24 hours to prepare and submit the petition to FDA.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section; activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
1.908; Disclosure of sanitary specifications; operating temperature conditions.	226	1	226	0.5833 (~35 mins.)	132

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Finally, we estimate an annual third-party disclosure burden of 132 hours, consistent with the currently approved burden estimate for this collection of information. We assume each of 226 firms will spend an average of 35 minutes, annually, disclosing written records as required under 21 CFR 1.908.

Cumulatively, we have reduced our burden estimate for the information collection. We made this adjustment to reflect the removal of one-time burden associated with implementation of the new regulatory requirements. Because these provisions have since become effective, the one-time estimates previously included have been removed.

Dated: May 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–11532 Filed 6–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Written Comments on an Updated Health Literacy Definition for Healthy People 2030

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) provides notice of a request for comments about the proposed update to the definition of health literacy. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for Healthy People 2030 used the following working definition: ''Health literacy occurs when a society provides accurate health information and services that people can easily find, understand, and use to inform their decisions and actions.''

DATES: Written comments must be submitted by August 5, 2019.

ADDRESSES: Written comments will be accepted via email at *Definehealthliteracy@HHS.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Santana, Public Health Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Rockville, MD 20852. 240–453–8265 Email: *Definehealthliteracy@HHS.gov.*

SUPPLEMENTARY INFORMATION: Healthy People and health literacy. Healthy People provides science-based, 10-year national objectives for improving the health of all Americans. Health literacy objectives have been tracked in Healthy People 2010 and 2020 and will also be included in Healthy People 2030.

Health literacy is one of the Healthy People 2030 framework's foundational principles (''Achieving health and well-being requires eliminating health disparities, achieving health equity, and attaining health literacy'') and one of its overarching goals (''Eliminate health disparities, achieve health equity, and attain health literacy to improve the health and well-being of all'').

Current Healthy People health literacy definition. The following definition of health literacy has been used in Healthy People 2010 and Healthy People 2020: ''Health literacy is the degree to which individuals have the capacity to obtain, process, and understand basic health information needed to make appropriate health decisions.''

This definition of health literacy has had a tremendous impact on the field, influencing health literacy measurement and improvement efforts around the world.

The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives used this working definition of health literacy for 2030: ''Health literacy occurs when a society provides accurate health information and services that people can easily find, understand, and use to inform their decisions and actions.''

This working definition reflects the evolution of the concept of health literacy toward a consensus that health literacy is affected not only by an individual's capacities, but also by the accessibility, clarity, and actionability of health information and health services.

Submission Instructions. Comments should:

1. Address the strengths and/or weaknesses of the recommended definition,
2. Be brief and concise; Limit 250 words
3. Make specific editing suggestions, and
4. Cite articles that support suggested changes (if any).

Reference Material

Healthy People 2030 Framework. Available at *https://www.healthypeople.gov/2020/About-Healthy-People/Development-Healthy-People-2030/Framework.*

Pleasant, A., R.E. Rudd, C. O'Leary, M.K. Paasche-Orlow, M.P. Allen, W. Alvarado-Little, L. Myers, K. Parson, and

S. Rosen. 2016. Considerations for a New Definition of Health Literacy. NAM Perspectives. Discussion Paper, National Academy of Medicine, Washington, DC. doi: 10.31478/201604a. *https://doi.org/10.31478/201604a.*

Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030. Issue Briefs to Inform Development and Implementation of Healthy People 2030. Retrieved from: *https://www.healthypeople.gov/sites/default/files/HP2030_Committee-Combined-Issue%20Briefs_2019-508c.pdf.*

Dated: May 22, 2019.

Donald Wright,

Deputy Assistant Secretary for Health.

[FR Doc. 2019–11571 Filed 6–3–19; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of SCORE Applications.

Date: July 12, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Ave NW, Washington, DC 20036.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 29, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–11535 Filed 6–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Subcommittee Meetings for the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC)

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice of subcommittee meetings (virtual).

SUMMARY: The Secretary of Health and Human Services (Secretary) announces subcommittee meetings of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC).

The meetings are open to the public and can be accessed via telephone only. Agenda with call-in information will be posted on the SAMHSA website prior to the meetings at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.*

The meetings will include information on the following focus areas: Data, Access, Treatment and Recovery, Justice, and Finance.

Committee Name: Interdepartmental Serious Mental Illness Coordinating Committee (subcommittee meetings).

DATES:

June 20, 2019/1:00 p.m.–2:30 p.m. (EDT)/OPEN/Focus Area 1: Data

June 26, 2019/9:00 a.m.–10:30 a.m. (EDT)/OPEN/Focus Area 2: Access

June 26, 2019/9:00 a.m.–10:30 a.m. (EDT)/OPEN/Focus Area 3: Treatment and Recovery

June 26, 2019/10:45 a.m.–12:15 p.m. (EDT)/OPEN/Focus Area 4: Justice

June 26, 2019/10:45 a.m.–12:15 p.m. (EDT)/OPEN/Focus Area 5: Finance

ADDRESSES: The meetings will be held (virtually) at SAMHSA Headquarters, 5600 Fishers Lane, Rockville, Maryland 20857.

Substantive meeting information and a roster of Committee members is available at the Committee's website *https://www.samhsa.gov/about-us/advisory-councils/smi-committee.*

FOR FURTHER INFORMATION CONTACT: Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; telephone: 240–276–1279; email: *pamela.foote@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The ISMICC was established on March 15, 2017, in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in serious mental illness (SMI) and serious emotional disturbance (SED), research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMIs, SEDs, and advances in access to services and support for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than 1 (one) year after the date of enactment of the 21st Century Cures Act, and 5 (five) years after such date of enactment, the ISMICC shall submit a report to Congress and any other relevant federal department or agency.

II. Membership

This ISMICC consists of federal members listed below or their designees, and non-federal public members.

Federal Membership: Members include, The Secretary of Health and Human Services; The Assistant Secretary for Mental Health and Substance Use; The Attorney General; The Secretary of the Department of Veterans Affairs; The Secretary of the Department of Defense; The Secretary of the Department of Housing and Urban

Development; The Secretary of the Department of Education; The Secretary of the Department of Labor; The Administrator of the Centers for Medicare and Medicaid Services; and The Commissioner of the Social Security Administration.

Non-federal Membership: Members include, 14 non-federal public members appointed by the Secretary, representing psychologists, psychiatrists, social workers, peer support specialists, and other providers, patients, family of patients, law enforcement, the judiciary, and leading research, advocacy, or service organizations. The ISMICC is required to meet at least twice per year.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2019–11272 Filed 6–3–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Suspension of All Direct Commercial Passenger and Cargo Flights Between the United States and Venezuela

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Homeland Security (DHS) has determined that conditions in Venezuela threaten the safety and security of passengers, aircraft, and crew, and that the public interest requires an immediate suspension of all commercial passenger and cargo flights between the United States and Venezuela. The U.S. Department of Transportation (DOT) concurred with this determination and has issued an Order suspending all foreign air transportation for passengers or cargo to or from any airport in Venezuela, effective May 15, 2019.

DATES: Applicable May 15, 2019.

FOR FURTHER INFORMATION CONTACT: James Gregory, Acting Assistant Administrator, Strategic Communications and Public Affairs, TSA–4, Transportation Security Administration (TSA), 601 South 12th Street, Arlington, VA 20598–6004; telephone: (571) 227–3051; email: *James.O.Gregory@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 44907(e) of title 49, United States Code, if ''(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from [a foreign] airport; and (2) the public interest requires an immediate suspension of transportation between the United States and that airport,'' the Secretary of Homeland Security, in coordination with the Secretary of Transportation and with the approval of the Secretary of State, shall suspend flights to and from that foreign airport.

The Secretary of Homeland Security has determined that conditions in Venezuela threaten the safety and security of passengers, aircraft, and crew, and that the public interest requires an immediate suspension of air transportation. This determination is based on several prevailing factors, which include: (1) Reports of civil unrest and violence in and around the airports; (2) the inability of TSA to gain access to Venezuelan airports to conduct required security assessments to determine whether adequate security measures are in place; (3) the current economic and political crisis in Venezuela; (4) cancellation of flights to Venezuela by American Airlines, the largest air carrier providing service, and two other carriers; (5) the U.S. Department of State's publication of Do Not Travel advisories, suspension of Embassy operations, and recommendation that TSA inspectors not enter the country owing to safety concerns; (6) the Federal Aviation Administration's issuance of a Notice to Airmen (NOTAM) on May 1, 2019, which prohibits all flight operations by U.S. air carriers and commercial operators in Venezuela airspace below FL 260; and (7) the risk of Maduro regime actions against U.S. citizens and U.S. interests located in Venezuela. Following Secretary of State approval, DOT concurred with this determination and suspended foreign air transportation of passengers or cargo to or from any airport in Venezuela, effective May 15, 2019.

Notice of the Secretary of Homeland Security's finding regarding conditions in Venezuela shall be displayed prominently in all U.S. airports with regularly scheduled air carrier operations. DHS will notify the news media of this determination. The Secretary of Homeland Security has instructed TSA to require that each foreign and domestic air carrier providing air transportation originating in the United States to any person with a flight itinerary that originates in, transfers or transits through, or has a final destination of any airport in Venezuela, provide written notice to such person advising that conditions in Venezuela currently present a threat to the traveling public.

If and when the conditions in Venezuela change and if in the public interest, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, will revisit this determination.

Dated: May 24, 2019.

Kevin K. McAleenan,

Acting Secretary of Homeland Security.

[FR Doc. 2019–11680 Filed 6–3–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0174]

Agency Information Collection Activities; Energy Resource Development Program Grants

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Assistant Secretary-Indian Affairs (AS-IA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 5, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Winter Jojola-Talburt, U.S. Department of the Interior, Office of Indian Energy and Economic Development, Division of Energy and Mineral Development, 13922 Denver West Pkwy, Ste. 200, Lakewood, Colorado 80401; or by email at *ieedgrants@bia.gov.*

Please reference OMB Control Number 1076–0174 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Winter Jojola-Talburt by email at *ieedgrants@bia.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the AS–IA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the AS–IA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the AS–IA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Office of Indian Energy and Economic Development (IEED) administers and manages the energy resource development grant program under the Energy and Minerals Development Program (EMDP). Congress may appropriate funds to EMDP on a year-to-year basis. When funding is available, IEED may solicit proposals for energy resource development projects from Indian Tribes and Tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use or develop those energy resources on Indian land. The projects may be in the areas of exploration, assessment, development, feasibility, or market studies. Indian Tribes that would like to apply for an EMDP grant must submit an application that includes certain information, and must assist IEED by providing information in support of any National Environmental Policy Act (NEPA) analyses. Upon acceptance of an application, a Tribe must then submit one-to two-page quarterly progress reports summarizing events, accomplishments, problems and/or results in executing the project. Quarterly reports assist IEED staff with project monitoring of the EMDP program and ensure that projects are making adequate progress in achieving the project's objectives.

Title of Collection: Energy and Mineral Development Program Grants.

OMB Control Number: 1076–0174.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes with Indian land.

Total Estimated Number of Annual Respondents: 53 applicants per year; 34 project participants each year.

Total Estimated Number of Annual Responses: 53 per year for applications; 136 per year for progress reports.

Estimated Completion Time per Response: 40 hours per application; 1.5 hours per progress report.

Total Estimated Number of Annual Burden Hours: 2,324 hours (2,120 for applications and 204 for progress reports).

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Once per year for applications; 4 times per year for progress reports.

Total Estimated Annual Nonhour Burden Cost: $0.

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.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–11552 Filed 6–3–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2100000.19X.L16100000.PN0000; OMB Control Number 1004–0212]

Agency Information Collection Activities; Resource Management Planning

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 5, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0212 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Leah Baker by telephone at 202–912–7282 or by email at *LBaker@blm.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This control number provides State Governors an opportunity to work with the BLM to resolve possible inconsistencies between BLM land use plans and State or local plans, policies, or programs; and authorizes protests of land use plans and plan amendments by the BLM.

Title of Collection: Resource Management Planning.

OMB Control Number: 1004–0212.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, local, and tribal governments; individuals/households; businesses; and associations.

Total Estimated Number of Annual Respondents: 131.

Total Estimated Number of Annual Responses: 131.

Estimated Completion Time per Response: 15 hours.

Total Estimated Number of Annual Burden Hours: 1,965.

Respondent's Obligation: Required to Obtain or Maintain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2019–11523 Filed 6–3–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027851; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, Formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the History Colorado. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to History Colorado at the address in this notice by July 5, 2019.

ADDRESSES: Alisa DiGiacomo, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4687, email *alisa.digiacomo@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of History Colorado, Denver, CO. The human remains and associated funerary objects were removed from Montezuma and La Plata Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Hopi Tribe, Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas); and the Zuni Tribe of the Zuni Reservation, New Mexico.

The Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Picuris, New Mexico; and the Pueblo of Santa Ana, New Mexico were invited to consult but did not do so.

Hereafter, all the Tribes listed above are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In March 2018, human remains representing, at minimum, three individuals were removed from 5MT20855 in Montezuma County, CO. The individuals were removed during archeological monitoring for Kinder Morgan CO2 Company's proposed Well Pad and Access Road construction. The human remains were transferred to the Office of Archaeology and Historic Preservation (OAHP) in September 2018, and are identified as OAHP Case Number 331. The human remains represent one adult female 25–35 years of age, one adult female 45–65 years of age, and one adult male 25–60 years of age. No known individuals were identified. The 11 associated funerary objects are one lot of gray ware sherds representing a bowl, one lot of white ware sherds representing a bowl, one lot of stone flakes, three lots of sherds, one Mancos grayware pitcher, one polishing stone, one piece of ground stone in two sections, and two burned juniper slabs.

The site at 5MT20855 is a multicomponent, seasonal habitation site. The architecture and ceramics recovered from the component associated with these individuals date to the late Basketmaker III/Pueblo I periods (A.D. 550–900). Osteological analysis by Woods Canyon Archaeological Consultants determined the individuals to be Native American. The preponderance of the evidence, including geographical location, archeological evidence (including site architecture and material culture), biological evidence, and continuity of key cultural traits through time, shows that the site is associated with the Ancestral Puebloan occupations of the southwestern United States from the Basketmaker II period through the Pueblo III period (approximately 1000 B.C. to A.D. 1300).

In the 1930s, human remains representing one individual were removed from Blue Mesa, La Plata County, CO. A second individual was removed from Yellow Jacket Canyon, Montezuma County, CO. A third individual is represented by a tooth, and

was collected with one of the other individuals, but it is unclear which one. In the 1970s, the collectors Homer Root and Charles McLean gave the human remains of these three individuals to a private citizen. The transferee's son found them in 2018, while handling his deceased father's estate. Root and McLean indicated that the human remains came from Basketmaker and Pueblo burials. In August 2018, the county coroners ruled out a forensic interest, where upon the human remains were transferred to History Colorado. They are identified as OAHP Case Number 336. No known individuals were identified. No associated funerary objects are present.

Osteological analysis by Dr. Christine Pink determined the individuals to be Native American. The geographical areas from which the human remains were removed contain numerous documented Ancestral Puebloan sites. Root and McLean were knowledgeable about Ancestral Puebloan burials. Root was an avid collector of Ancestral Pueblo human remains and goods, and led field schools for Fort Lewis College from 1965 to 1969. The preponderance of the evidence, including geographical location, biological evidence, and expert opinion regarding burial context, shows that the human remains are associated with the Ancestral Puebloan occupations of the southwestern United States from the Basketmaker II period through the Pueblo III period (approximately 1000 B.C. to A.D. 1300).

Evidence for the cultural affiliation of the human remains in this notice was gathered from tribal consultations, physical examination of the human remains, a survey of acquisition history, a review of current available archeological, ethnographic, historical, anthropological and linguistic literature, and artifact analysis.

Determinations Made by the History Colorado

Officials of History Colorado have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 11 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas); and the Zuni Tribe of the Zuni Reservation, New Mexico, hereafter referred to as ''The Affiliated Tribes.''

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Alisa DiGiacomo, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4687, email *alisa.digiacomo@state.co.us,* by July 5, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Affiliated Tribes may proceed.

History Colorado is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: May 3, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–11538 Filed 6–3–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027841; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Department of Environment and Conservation, Division of Archaeology, Nashville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Department of Environment and Conservation, Division of Archaeology has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Tennessee Department of Environment and Conservation, Division of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Tennessee Department of Environment and Conservation, Division of Archaeology at the address in this notice by July 5, 2019.

ADDRESSES: Michael C. Moore, Tennessee Department of Environment and Conservation, Division of Archaeology, 1216 Foster Avenue, Cole Building 3, Nashville, TN 37243, telephone (615) 687–4776, email *mike.c.moore@tn.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Tennessee Department of Environment and Conservation, Division of Archaeology, Nashville, TN. The human remains and associated funerary objects were removed from Rutherford County and Williamson County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Tennessee Department of Environment and Conservation, Division of Archaeology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Muscogee (Creek) Nation; The Osage Nation (previously listed as the Osage Tribe); and the United Keetoowah Band of Cherokee Indians in Oklahoma, hereafter referred to as ''The Tribes.''

History and Description of the Remains

The Fernvale site (40WM51) was excavated by the Division of Archaeology in 1985 prior to bridge construction by the Tennessee Department of Transportation. This site is located on the west side of the South Harpeth River in northwest Williamson County, TN, near the community of Fernvale. The final report on the excavation (*The Fernvale Site (40WM51): A Late Archaic Occupation Along the South Harpeth River in Williamson County, Tennessee,* edited by A. Deter-Wolf, Tennessee Department of Environment and Conservation, Division of Archaeology Research Series No. 19) is available in pdf format on the Division web page, at *https://www.tn.gov/content/dam/tn/environment/archaeology/documents/researchseries/arch_rs19_fernvale_Rev_2016.pdf.*

Radiocarbon dates and recovered artifacts indicate Fernvale is primarily a Late Archaic period site dating 3490 to 3320 BP. All removed burials and associated burial objects are consistent with previously identified Native American burials and objects dating to the Late Archaic period. 33 individuals were removed from 27 pit features. Burial 2 comprised an adult female that had been interred with a mature dog. No known individuals were identified. A total of 61 associated funerary objects were recovered with these individuals. The 62 associated funerary objects are three bone pins, nine projectile points, two polished bone fragments, one ovate knife, one biface, one drill, one antler tine, 17 canid phalanges, four bone awls, seven fragmented mussel shells, two limestone hoes, four shell beads, two hammerstones, one grooved cobble, six fragmented animal bones, and the remains of one dog.

The Arnold site (40WM5) was established on a low ridge along the north bank of the Little Harpeth River about a mile southwest of the city of Brentwood in northern Williamson County, TN. This site, named after the famed singer Eddy Arnold, was excavated in 1965 and 1966 by the Southeastern Indian Antiquities Survey Inc. (SIAS) prior to construction of a residential subdivision.

The SIAS excavation is reported to have uncovered 151 stone-box graves and the remnants of 17 structures. A report on the SIAS Arnold site excavations was published in 1972 as part of the edited volume *The Middle Cumberland Culture,* edited by Robert B. Ferguson, Vanderbilt University Publications in Anthropology No. 3, Nashville, TN.

The stone-box graves and structure architecture indicate Arnold is a Mississippian period site. All removed burials and associated burial objects are consistent with previously identified late prehistoric Native American burials and objects dating roughly A.D. 1200–1450. Information regarding the Middle Cumberland Mississippian culture can be found in Kevin Smith's 1992 dissertation *The Middle Cumberland Region: Mississippian Archaeology in North Central Tennessee,* Vanderbilt University; as well as the 2009 (revised 2012) report *Archaeological Expeditions of the Peabody Museum in Middle Tennessee, 1877–1884* by Michael C. Moore and Kevin E. Smith, Tennessee Division of Archaeology Research Series No. 16 (available as a free pdf on the Division of Archaeology website, at *https://www.tn.gov/content/dam/tn/environment/archaeology/documents/researchseries/arch_rs16_peabody_museum_2009.pdf*).

While over 150 burials were reportedly removed during the 1965–1966 work, the Division of Archaeology holds 19 human individuals from 14 burials. The remainder of the skeletal collection was held by Vanderbilt University. No known individuals were identified. The Division has five associated funerary objects recovered with these individuals. The five associated funerary objects are three ceramic frog-effigy jars and two ceramic effigy hooded bottles.

The Ryan site (40RD77) was established on a floodplain of Stewart Creek in Smyrna, Rutherford County, TN. This site was defined in 1981, by the Tennessee Department of Transportation (TDOT), during planning for an interstate connection, and it was excavated in the spring of 1982, prior to construction. The human remains were transferred to the Tennessee Division of Archaeology (TDOA) for curation upon completion of the work, although the burial objects were held by TDOT. A report was not completed at that time.

In 2000, the Ryan collection was temporarily transferred to TDOT for analysis by Gary Barker and Christopher M. Hazel. Their results were published in a 2007 Journal of Alabama Archaeology (JAA) article (''Ryan (40RD77): A Late Middle Archaic Benton Culture Cemetery in Tennessee's Central Basin''). After completion of the Barker and Hazel analysis, the human remains were returned to the TDOA. The JAA article listed 23 individuals from 20 burial pits, as well as one human cremation (originally designated Feature 4). In 2009 the TDOA requested that Middle Tennessee State University (MTSU) reanalyze the Ryan human remains. This reanalysis identified 20 individuals from the 20 burial pits, along with the one Feature 4 human cremation. No known individuals were identified.

The Division documented 22 associated funerary objects recovered with these individuals. These 23 associated funerary objects are three Benton style darts/knives, one stemmed dart/knife, one unnotched dart/knife, three shell beads, six drilled canine incisors, one bone atlatl hook, two shell pins, two bone pins, one lot of small steatite fragments (likely representing a single unknown object), one turkey awl, one raccoon baculum, and the remains of one dog.

The placement of these individuals in flexed burial positions within circular burial pits, along with distinctive associated funerary objects (including Benton style darts/knives and an atlatl hook), is consistent with previously identified Native American burials and objects dating to the prehistoric Middle Archaic period. Two radiocarbon dates between 4680–4360 B.C. confirm Ryan as a Middle Archaic period site.

Determinations Made by the Tennessee Department of Environment and Conservation, Division of Archaeology

Officials of the Tennessee Department of Environment and Conservation, Division of Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 73 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 90 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Chickasaw Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michael C. Moore, Tennessee Department of Environment and Conservation, Division of Archaeology, 1216 Foster Avenue, Cole Building 3, Nashville, TN 37243, telephone (615) 687–4776, email *mike.c.moore@tn.gov,* by July 5, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Chickasaw Nation may proceed.

The Tennessee Department of Environment and Conservation, Division of Archaeology is responsible for notifying The Tribes that this notice has been published.

Dated: May 2, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–11539 Filed 6–3–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027959; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Cibola National Forest, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Cibola National Forest has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Cibola National Forest. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Cibola National Forest at the address in this notice by July 5, 2019.

ADDRESSES: Forest Supervisor, Steve Hattenbach, Cibola National Forest and Grasslands, 2113 Osuna Road NE, Albuquerque, NM 87113, telephone (505) 346–3804, email *steven.hattenbach@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of Agriculture, Forest Service, Cibola National Forest, Albuquerque, NM. The human remains and associated funerary objects were removed from site AR–03–03–02–536 (LA79663), Mt. Taylor Ranger District, Cibola National Forest and National Grasslands, Cibola County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Cibola National Forest professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Between 1980 and 1991, human remains representing, at minimum, two individuals were removed from site AR–03–03–02–536 (LA79663) in Cibola County, NM. Based on reports, site forms, and other notes found in the Forest's heritage resource files, the site experienced several episodes of rodent damage and vandalism (pot hunting) over a period of 11 years (1980–1991). The initial damage to the site was noted in July 1980. At that time, 18 human bones or fragments of bones were observed in two midden features, and were collected by Forest Service archeological staff. The site form from that time indicates that the bones were likely brought to the surface as a result of rodent activity. The skeletal remains consist of four long bones, six ribs or rib fragments, seven vertebrae, and one sacrum, and represent the partial skeletons of two Native American individuals of unknown sex and age. No known individuals were identified.

Damage to site AR–03–03–02–536 (LA79663) from pot hunting was noted in 199l, and the site was subsequently monitored more frequently, until an individual was discovered digging within a room block at the site, resulting in an investigation in September 1991. During the course of the investigation, 12 artifacts collected by the individual were seized by a Forest Service Law Enforcement officer. In June 2008, evidence of new disturbance (pot hunting) was observed at the site. As part of the damage assessment, the Forest Service archeologist screened soil from two holes, and recovered additional items (ceramic sherds, flaked stone, small pieces of charcoal and adobe, and seven small pieces of faunal bone). The 63 associated funerary objects are 19 ceramic sherds, 13 pieces of flaked stone, 10 pieces of charcoal, 14 pieces of adobe, and seven small fragments of faunal remains.

Site AR–03–03–02–536 (LA79663) is a small masonry pueblo that is estimated to date between A.D. 900 and 1100. It is located in Limekiln Canyon, in the eastern portion of the Zuni Mountains, on lands managed by the Mt. Taylor Ranger District of the Cibola National Forest and National Grasslands. The 1996 report *Cultural Affiliations—Prehistoric Cultural Affiliations of Southwestern Indian Tribes* prepared by the USDA Forest Service (Southwestern Region), the Bureau of Land Management (Arizona and New Mexico State Offices), and the Arizona State Museum found that the Eastern Anasazi in the Cibola Area (A.D. 700–1300) are culturally affiliated with the Hopi Tribe of Arizona, Pueblo of Acoma, New Mexico, and the Zuni Tribe of the Zuni Reservation, New Mexico. During consultation, the Pueblo of Laguna, New Mexico Historic Preservation Office confirmed it, too, considers the eastern half of the Zuni Mountains part of its aboriginal land base. The Navajo Nation, Arizona, New Mexico & Utah also claims cultural affiliation with the *Nihi*

naa zázi people of the Southwest (Anasazi people from Archaic-Pueblo IV periods).

Determinations Made by the U.S. Department of Agriculture, Forest Service, Cibola National Forest

Officials of the U.S. Department of Agriculture, Forest Service, Cibola National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 63 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Forest Supervisor, Steve Hattenbach, Cibola National Forest and Grasslands, 2113 Osuna Road NE, Albuquerque, NM 87113, telephone (505) 346–3804, email *steven.hattenbach@usda.gov,* by July 5, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Cibola National Forest is responsible for notifying The Tribes that this notice has been published.

Dated: May 14, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–11540 Filed 6–3–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027962; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by July 5, 2019.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains and associated funerary objects were removed from site 13WD216 in Sioux City, Woodbury County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In September 1958, human remains representing, at minimum, 12 individuals were removed from the Sioux City South Ravine (13WD216) in Woodbury County, IA. The human remains were disturbed by heavy machinery at a sand borrow during the construction of Interstate 29. Staff from Morningside College began work at the site on the day of the discovery, and Reynold Ruppe of the University of Iowa completed the excavation. The site was looted twice during the excavation, resulting in the loss of human remains and artifacts. The remaining artifacts and human remains were dispersed, with some displayed at the Sioux City Public Museum and some reposed at the University of Iowa. In 1965, most of the human remains and artifacts were reunited in Sioux City, Iowa. The human remains were then transferred to William Bass at the University of Kansas for study, while the artifacts were sent to the Smithsonian Institution laboratory in Lincoln, Nebraska. Most of the human remains and some of the artifacts from site 13WD216 were discovered in the repository of the University of Tennessee-Knoxville in early 2018, and were transferred to the Iowa Office of the State Archaeologist Bioarchaeology Program in July 2018. Individuals represented include one

middle-aged male, three young adult males, two middle-aged females, three young-middle adult females, one young adult female, one female 17 to 18 years old, and one child 11 to 12 years old (Burial Project 3362). No known individuals were identified. The 101 associated funerary objects are eight beads, 17 buttons, six fabric scraps, 10 fragments of a bone object, three leather belts (partial), four shoe soles/fragments, one lead bullet, two coffin handles (one partial), one coffin lace, one coffin plaque fragment, 26 square cut nails, two screws, 14 fragments of coffin wood, one iron brace, one iron bracket, and four ceramic sherds.

Based on the presence of square cut nails, the site is roughly dated to A.D. 1800–1900. Graves with Prosser buttons post-date 1840, while the burial with the mass-produced coffin handle likely dates between 1860 and 1880. A European-tradition burial position (supine and extended) in wooden coffins and the mix of ancestry apparent from osteological analysis lend support to the identification of this site as the burial ground of a small French and Native American community mentioned in a county history as having emerged in the 1850s. Not all individuals excavated from this cemetery were identified as Native American. Four individuals were identified as Native American through facial morphology and cranial metrics. Two individuals, a young adult male and female, were determined to have African American ancestry, possibly with Native American admixture, based on cranial metrics and dental morphology. Two individuals, a young adult male and the 11- to 12-year-old child, were determined to be Euroamerican based on facial and dental morphology. Ancestry could not be determined osteologically for the four individuals whose crania were not present, however, after discussion with tribal representatives, they are considered to be Native American. The *Past and Present of Woodbury County* (Constant R. Marks, 1904) does not specify the tribal affiliation of all the individuals living in the area, but one household included a daughter of War Eagle, and the Sioux and Dakota are mentioned.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of ten individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 101 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by July 5, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying The Tribes that this notice has been published.

Dated: May 14, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–11541 Filed 6–3–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027844; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Petrified Forest National Park, Petrified Forest, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Petrified Forest National Park has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Petrified Forest National Park. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Petrified Forest National Park at the address in this notice by July 5, 2019.

ADDRESSES: Brad Traver, Superintendent, Petrified Forest National Park, Box 2217, Petrified Forest, AZ 86028, telephone (928) 524–6228 Ext. 225, email *brad_traver@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Petrified Forest National Park, Petrified Forest, AZ. The human remains and associated funerary objects were removed from Petrified Forest National Park, Apache and Navajo Counties, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Petrified Forest National Park.

This notice corrects the minimum number of individuals and number of associated funerary objects reported in two previously published notices: Notice of Inventory Completion (80 FR 23573–23574, April 28, 2015); and corrected Notice of Inventory Completion (80 FR 32602–32603, June 9, 2015). This notice replaces both the original Notice of Inventory Completion of April 28, 2015 and the corrected Notice of Inventory Completion of June 9, 2015. A re-assessment of human remains previously determined to be

culturally unidentifiable resulted in determinations of cultural affiliation. The additional associated funerary objects were discovered during preparation for repatriation. Transfer of control of the items in this correction notice has not occurred.

Consultation

A detailed assessment of the human remains was made by Petrified Forest National Park professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Santa Ana, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult, but did not participate: Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort Mojave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Pascua Yaqui Tribe of Arizona; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

In 1933–1934 human remains representing, at minimum, one individual were removed from AZ Q:1:23 in Navajo County, AZ, during legally authorized activities to restore the site architecture and interpret the site for visitors. The human remains are in the physical custody of the Museum of Northern Arizona, Flagstaff, AZ. No known individuals were identified. No associated funerary objects are present.

In 1953, human remains representing, at minimum, six individuals were removed from AZ Q:1:3 in Apache County, AZ, by Fred Wendorf as part of his doctoral research at Harvard University. The human remains and associated funerary objects are in the physical custody of the Museum of Northern Arizona (MNA) in Flagstaff, AZ. No known individuals were identified. The 2,201 associated funerary objects are 13 pottery bowls, one mineral (galena), six pottery jars (some fragmentary), 2,083 shell beads, one stone pendant, two stone scrapers, one shell pendant, 25 basket fragments, one blanket, and 68 pottery sherds.

In 1967, human remains representing, at minimum, three individuals were removed from AZ Q:1:22 in Apache County, AZ, during legally authorized excavations conducted by Calvin Jennings of the Museum of Northern Arizona. The human remains are in the physical custody of the Museum of Northern Arizona, Flagstaff, AZ. No known individuals were identified. No associated funerary objects are present.

In 1968, human remains representing, at minimum, one individual were removed from AZ Q:1:3 in Apache County, AZ, by the Chief Naturalist at Petrified Forest National Park during regular site monitoring. The human remains are in the physical custody of the Museum of Northern Arizona, Flagstaff, AZ. No known individuals were identified. No associated funerary objects are present.

In 1985, human remains representing, at minimum, one individual were removed from AZ Q:1:58 in Apache County, AZ, during legally authorized excavations. No known individuals were identified. The two associated funerary objects are one pottery bowl and one charcoal sample.

In 1988, human remains representing, at minimum, two individuals were removed from AZ Q:1:226 in Navajo County, AZ, during legally authorized archeological survey and site recordation. No known individuals were identified. The 11 associated funerary objects are two pottery bowls, three pottery jars, and six shell beads.

Archeological site context and types of funerary objects suggest that all five sites were occupied by ancestral Puebloan peoples. Ethnographic and archeological evidence, including burial orientation, body position, and the type and placement of the associated funerary objects, indicates that the mortuary practices of these ancestral Puebloan peoples correspond closely with those of the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico.

Determinations Made by Petrified Forest National Park

Officials of Petrified Forest National Park have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 14 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 2,214 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Brad Traver, Superintendent, Petrified Forest National Park, Box 2217, Petrified Forest, AZ 86028, telephone (928) 524–6228 Ext. 225, email *brad_traver@nps.gov,* by July 5, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

Petrified Forest National Park is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: May 2, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–11537 Filed 6–3–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Second Review)]

Sodium Nitrite From China and Germany Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping and countervailing duty orders on sodium nitrite from China and the antidumping order on sodium nitrite from Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: April 12, 2019

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson (202–205–2542), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 12, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 6, January 2, 2019) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on June 12, 2019, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before June 20, 2019 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 20, 2019. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 29, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–11562 Filed 6–3–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1159]

Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 29, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of LG Chem, Ltd. of South Korea and LG Chem Michigan, Inc. of Holland, Michigan. Supplements were filed on May 13, and 15, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium ion batteries, battery cells, battery modules, battery packs, components thereof, and processes therefor by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response submitted by Chemtrade Chemicals US LLC (''Chemtrade'') to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 28, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States or the sale within the United States after importation of certain products identified in paragraph (2) by reason of the misappropriation of trade secrets, the threat or effect of which is to substantially injure an industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''lithium-ion batteries, battery cells, battery modules, battery packs, components thereof, and processes therefor'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

LG Chem, Ltd., 128 Yeoui-daero, Yeongdeungpo-gu, Seoul 07336, Republic of Korea

LG Chem Michigan, Inc., 1 LG Way, Holland, MI 49423

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

SK Innovation Co., Ltd., 26 Jong-Ro, Jongno-Gu, Seoul 03188, Republic of Korea

SK Battery America, Inc., 201 17th Street NW, Suite 1700, Atlanta, GA 30363

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: May 29, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–11547 Filed 6–3–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *David A. Whitehill, et al.,* Case No. 1:14–cv–188–RJA–MJR, was lodged with the United States District Court for the Western District of New York (Buffalo Division) on May 28, 2019.

This proposed Consent Decree concerns a complaint filed by the United States against David A. Whitehill and Dependable Towing & Recovery, Inc., pursuant to Sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants based on allegations that they discharged pollutants without a permit into waters of the United States and violated an administrative order issued by the United States Environmental Protection Agency. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore impacted areas, perform mitigation, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Heather Gange, Senior Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044–7611, and refer to *United States* v. *David A. Whitehill, et al.,* DJ # 90–5–1–1–19741.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of New York (Buffalo Division), 2 Niagara Square, Buffalo, NY 14202. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2019–11536 Filed 6–3–19; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–034)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to NASA Paperwork Reduction Act Clearance Officer, Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001 or *Gatrie.Johnson@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF000, Washington, DC 20546, or *Gatrie.Johnson@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Ames Research Center, Human Systems Integration Division, manages voluntary safety reporting systems to collect and share safety information including, but not limited to, the NASA Aviation Safety Reporting System (ASRS) and the Confidential Close Call Reporting System (C3RS). Both systems are voluntary reporting systems for the reporting of safety incidents, events, or situations. Respondents include, but are not limited to, any participant involved in safety-critical domains such as aviation or railway operations including commercial and general aviation pilots, drone operators, air traffic controllers, flight attendants, ground crews, maintenance technicians, dispatchers, train engineers, conductors, and other members of the public.

The collected safety data are used by NASA, Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and other organizations that are engaged in research and the promotion of safety. The data are used to (1) Identify deficiencies and discrepancies so that these can be remedied by appropriate authorities, (2) Support policy formulation and planning for improvements and, (3) Strengthen the foundation of human factors safety research. Respondents are not reimbursed for associated cost to provide the information. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Method of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail.

III. Data

Title: NASA ASRS and Related Voluntary Safety Reporting Systems.

OMB Number:

Type of Review: Existing Information Collection in use without OMB Approval.

Affected Public: Individuals.

Estimated Number of Respondents: 100,000 annually.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50,000 hours.

Estimated Total Annual Cost: $3.88 M.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collection has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the propose collection of information; (3) ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2019–11572 Filed 6–3–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2019–027]

Office of Government Information Services Annual Open Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Office of Government Information Services (OGIS) annual open meeting.

SUMMARY: We are announcing OGIS's annual meeting, open to the public. The purpose of the meeting is to discuss OGIS's reviews and reports and allow interested people to appear and present oral or written statements.

DATES: The meeting will take place on Friday, June 14, 2019, from 10 a.m. to 11:30 a.m. EDT. Please register for the meeting no later than 5 p.m. EDT on June 12, 2018.

Location: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; William G. McGowan Theater; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5770, or by email at *ogis@nara.gov,* with the subject line ''Annual Open Meeting.''

SUPPLEMENTARY INFORMATION: We conduct our meetings in accordance with the Freedom of Information Act, 5 U.S.C. 552(h)(6). OGIS's 2019 Report for Fiscal Year 2018, published during Sunshine Week (March 10–16, 2019), summarizes our work, in accordance with FOIA, 5 U.S.C. 552(h)(4)(A).

In addition to hearing statements from attendees, we will also answer questions during the meeting. Please submit questions before the meeting by emailing *ogisopenmeeting@nara.gov* through June 13th.

Procedures: The meeting is open to the public. Due to building access procedures, you must register through Eventbrite if you wish to attend. You will also go through security screening when you enter the building. To register, use this link: *https://www.eventbrite.com/e/office-of-government-information-services-annual-open-meeting-june-14-2019-tickets-62571667542.*

We will also live-stream the meeting on the U.S. National Archives' YouTube

channel, *https://www.youtube.com/watch?v=ECqipkQsQJM,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *ogis@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Alina Semo,

Director, Office of Government Information Services.

[FR Doc. 2019–11521 Filed 6–3–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 5, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5080, Alexandria, VA 22314, or email at *PRAComments@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mackie Malaka at (703) 548–2704, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0185.

Type of Review: Extension of a currently approved collection.

Title: NCUA Vendor Registration Form.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) (Pub. L. 111–203) calls for agencies to promote the inclusion of minority and women-owned firms in their business activities. The Act also requires agencies to annually report to Congress the total amounts paid to minority and women-owned businesses. In order for NCUA to comply with this Congressional mandate, NCUA 1772 is used to collect certain information from its current and potential vendors, so that it can identify businesses that meet the criteria. The vendor information is to be submitted to the agency on a one-time basis and will be used to assign an ownership status to the vendor (*i.e.,* minority-owned business, woman-owned business) per the requirements of the Act. Once an ownership status is assigned to each vendor, NCUA will be able to calculate the total amounts of contracting dollars paid to minority-owned and women-owned businesses.

Affected Public: Private Sector: Businesses or other for-profit.

Estimated Total Annual Burden Hours: 33.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on May 30, 2019.

Dated: May 30, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–11626 Filed 6–3–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 5, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5080, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mackie Malaka at (703) 548–2704, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0193.

Type of Review: Extension of a currently approved collection.

Title: Joint Standards for Assessing the Diversity Policies and Practices.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) required the NCUA, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (Agencies) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the Agency. The Agencies worked together to develop joint standards and, on June 10, 2015, they jointly published in the **Federal Register** the ''Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies.''

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 2,600.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on May 30, 2019.

Dated: May 30, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–11625 Filed 6–3–19; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0129]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from May 7, 2019, to May 20, 2019. The last biweekly notice was published on May 21, 2019.

DATES: Comments must be filed by July 5, 2019. A request for a hearing must be filed by August 5, 2019.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0129. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail Comments To:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0129, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0129.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0129, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

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

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

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment

period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic

storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3 (Millstone or MPS), New London County, Connecticut

Date of amendment request: April 11, 2019. A publicly-available version is in ADAMS under Accession No. ML19109A100.

Description of amendment request: The amendments would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–522, ''Revise Ventilation System Surveillance Requirements to Operate for 10 Hours per Month,'' and decrease ventilation system flow test requirements from 10 hours at the frequency specified in the Millstone, Unit Nos. 2 and 3, Surveillance Frequency Control Program (SFCP) to 15 continuous minutes at the frequency specified in the SFCP. Additionally, Millstone, Unit No. 2, Technical Specification (TS) Surveillance Requirement (SR) 4.6.5.1.a would be revised to remove the requirement to run the flow test with the duct heaters energized since the charcoal adsorption test is performed at 95 percent relative humidity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff edits in square brackets.

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed change modifies existing SRs to operate the EBFS [Enclosure Building Filtration System] system for MPS2 and ABFS [Auxiliary Building Filter System], CREVS [Control Room Emergency Ventilation System], and SLCRS [Supplementary Leak Collection and Release System] systems for MPS3 that are equipped with electric heaters for a 10 hour period at the frequency specified in the SFCP with a requirement to operate the systems for 15 continuous minutes. Additionally, the SR for EBFS will be revised to remove the requirement [to] conduct the flow test with the duct heaters energized since the charcoal adsorption test is performed at 95% relative humidity.

These systems are not accident initiators and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing changes are consistent with current regulatory guidance for these systems and will continue to assure that these systems perform their design function which may include mitigating accidents. Thus the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies existing SRs to operate the EBFS, ABFS, CREVS, and SLCRS systems equipped with electric heaters for a 10 hour period at the frequency specified in the SFCP with a requirement to operate the systems for 15 continuous minutes. Additionally, the SR for EBFS will be revised to remove the requirement [to] conduct the flow test with the duct heaters energized since the charcoal adsorption test is performed at 95% relative humidity.

The change proposed for these ventilation systems does not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change modifies existing SRs to operate the EBFS, ABFS, CREVS, and SLCRS systems equipped with electric heaters for a 10 hour period at the frequency specified in the SFCP with a requirement to operate the systems for 15 continuous minutes. Additionally, TSTF–522 identifies a regulatory position which indicates that plants which test ventilation system absorption at a relative humidity of 95% do not require heaters for the ventilation system to perform its specified safety function systems and that reference to the heaters can be removed from the TS. Based on justification provided in TSTF–522, the existing SR for EBFS will be revised to remove the requirement to complete the ventilation system test with the duct heaters energized since the adsorption test is performed at 95% relative humidity. EBFS will continue to have the heaters, but they will not be credited in the TS.

The design basis for the ventilation systems' heaters is to heat the incoming air which reduces the relative humidity. Per TSTF–522, the monthly 10 hour system operation utilizing the heaters was intended to remove moisture from the charcoal adsorber banks. Because the ASTM D3803–1989 Standard no longer requires this 10 hour operation utilizing the heaters, the duration is replaced with a continuous 15 minute operation requirement. The proposed change is consistent with guidance provided in Regulatory Position 4.9 of Regulatory Guide 1.52, Revision 3.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: James G. Danna.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: February 27, 2019. A publicly-available version is in ADAMS under Accession No. ML19058A251.

Description of amendment request: The amendment would place a Note prior to the surveillance requirements (SRs) section of Technical Specification (TS) 3.3.5.3 that allows delayed entry into the associated conditions and required actions, when a channel is placed in an inoperable status solely for testing, provided the associated Function maintains emergency core cooling system (ECCS) initiation capability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change to TS 3.3.5.3 adds a note that previously applied when the Surveillance Requirements for Modes 4 and 5 were included in TS 3.3.5.1. There are no new requirements or actions added that have not been previously approved. Applying the note cannot increase probability of an accident because it does not change plant equipment or SR method or surveillance frequency.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change duplicates existing TS Surveillance Requirements that will continue to protect Safety Limit 2.1.1.3. The note requires ECCS initiation function to be maintained in order to allow the delayed entry into the Condition. The proposed change will not alter the design function of the equipment involved. The event of concern is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes have no adverse effect on plant operation. The plant response to the design basis accidents do not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. The analysis in NEDC–30936–P–A demonstrates that the testing allowance does not significantly reduce the probability that the ECCS will initiate when necessary. The note can only be used when initiation capability is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jon P. Christinidis, DTE Energy, Expert

Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: David J. Wrona.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: February 25, 2019. A publicly-available version is in ADAMS under Accession No. ML19057A549.

Description of amendment request: The proposed amendment would allow use of the control room chilled water (CCH) system or the emergency service water (SW) system as acceptable cooling sources in support of the main control room (MCR) air conditioning (AC) system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The CCH system is not an initiator of an accident and does not have the function of preventing any accidents. Therefore, the proposed change does not involve an increase in the probability of an event.

The CCH system utilizes active components to perform its design function in support of MCR cooling, however, the CCH system utilizes safety-related equipment which meet the design requirements stated in the Columbia FSAR [Final Safety Analysis Report]. System performance and reliability will be monitored by the Maintenance Rule, the IST [Inservice Testing] Program and TS [technical specification] surveillance. Procedures are available for CCH system use and the CCH system components are accessible post-accident. Analyses have been performed and conclude there is adequate time to initiate MCR cooling following a design basis event. The proposed change does not impact radiological consequences of any accident described in the FSAR. Therefore, the proposed change does not involve a significant increase in the consequences of an event.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed change allows the use of either CCH or SW, when capable of the required heat removal, as cooling support to the [Main] Control Room AC system for the purpose of meeting both the equipment qualification temperature limit and the bounding control room habitability steady state temperature. The proposed change will align CCH to both the Division 1 and Division 2 emergency cooling coils for emergency standby service. If normal MCR cooling is lost, emergency MCR cooling will be manually initiated post-accident and is supported by analyses that conclude the manual actions are feasible and adequate time is available to perform the actions. The [Main] Control Room AC system cooling function is not an accident initiator and is not postulated to create a new or different kind of accident than previously analyzed.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed LAR [license amendment request] provides additional flexibility to utilize either the CCH or SW system to meet the MCR required equipment qualification temperature limit and the long term steady state temperature for 30 days continuous control room occupancy. The SW system will be evaluated to ensure it is capable of the required heat removal prior to crediting it as the available cooling source. Operator training will be provided to reflect use of CCH as the preferred cooling source to support the Control Room AC system in both Division 1 and Division 2 following approval of this LAR. Analyses have been performed and conclude that there is adequate time to initiate MCR cooling following a design basis event. Surveillances will be performed on both the CCH and SW systems in support of MCR cooling and the systems will be maintained as safety-related. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW, Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: March 25, 2019. A publicly-available version is in ADAMS under Accession No. ML19084A217.

Description of amendment request: The amendment would modify the Arkansas Nuclear One, Unit 1 Technical Specifications (TSs) to remove second completion times consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–439, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation'' (ADAMS Accession No. ML051860296).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates certain Completion Times from the TSs. Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with respect to the proposed change are no different than the consequences of the same accident when applying the existing Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of [a] structure, system, or component (SSC) from performing the credited function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, reactor building isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing plant operation. The proposed change does not alter any assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to delete the second Completion Time does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 9, 2019. A publicly-available version is in ADAMS under Accession No. ML19099A367.

Description of amendment request: The amendments would modify Technical Specification requirement 6.8.4.g, ''Primary Containment Leakage Rate Testing Program,'' to allow for a permanent extension of Types A and C integrated leakage rate test frequencies from 10 years to 1 year. In addition, the proposed request seeks approval for drywell-to-suppression chamber bypass leak rate test frequency from 120 months (10 years) to 180 months (15 years) to align this test with the proposed Type A test frequency (Surveillance Requirement 4.6.2.1.e).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed activity involves the revision of the Limerick Generating Station (LGS), Units 1 and 2 Technical Specification (TS) 6.8.4.g, ''Primary Containment Leakage Rate Testing Program,'' to allow the extension of the Type A integrated leakage rate test (ILRT) containment test interval to 15 years and the extension of the Type C local leakage rate test (LLRT) interval to 75 months. The proposed activity also involves the extension of the drywell-to-suppression chamber bypass leak test (DWBT) from 120 months to 180 months to align the test with the proposed Type A test frequency. Per the guidance provided in Nuclear Energy Institute (NEI) 94–01, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR 50, Appendix J,'' Revision 3–A, the current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions.

The proposed extensions do not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident.

The change in dose risk for changing the Type A test frequency from three-per-ten years to once-per-fifteen years, measured as an increase to the total integrated dose risk for all internal events accident sequences for LGS, is 6.60E–02 person-roentgen equivalent man(rem)/yr (0.36 percent) using the Electric Power Research Institute (EPRI) guidance with the base case corrosion included. The change in dose risk drops to 1.16E–02 person-rem/yr (0.06 percent) when using the EPRI Expert Elicitation methodology. The values calculated per the EPRI guidance are all lower than the acceptance criteria of ≤1.0 person-rem/yr or <1.0% person-rem/yr. The change in dose risk for changing the DWBT frequency from once-per-ten years to once-per-fifteen years, measured as an increase to the total integrated dose risk for all internal events accident sequences for LGS, is 1.5E–02 person-rem/yr. The results of the risk assessment for this amendment meet these criteria. Moreover, the risk impact for the ILRT extension when compared to other severe accident risks is negligible. Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

In addition, as documented in NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' dated September 1995, Types B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The LGS Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as: (1) Activity based, and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components, Containment Maintenance Rule Structures Monitoring Program, Containment Coatings Program and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test (ILRT). Based on the above, the proposed extensions do not significantly increase the consequences of an accident previously evaluated.

The proposed amendment also deletes Units 1 and 2 TS 6.8.4.g exceptions previously granted via TS Amendments No. 190 (Unit 1) and No. 151 (Unit 2) to allow one-time extensions of the ILRT test frequency for LGS. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the LGS, Units 1 and 2 TS 6.8.4.g involves the extension of the LGS, Units 1 and 2 Type A (ILRT) containment test interval to 15 years and the extension of the Type C (LLRT) test interval to 75 months. The proposed activity also involves the extension of the DWBT from 120 months to 180 months to align the test with the proposed Type A test frequency. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) nor does it alter the design, configuration, or change the manner in which the plant is operated or controlled beyond the standard functional capabilities of the equipment.

The proposed amendment also deletes Units 1 and 2 TS 6.8.4.g(a) exceptions previously granted to allow one-time extensions of the ILRT test frequency for LGS. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to Units 1 and 2 TS 6.8.4.g involves the extension of the LGS Type A containment test interval to 15 years and the extension of the Type C test

interval to 75 months for selected components. The proposed activity also involves the extension of the DWBT from 120 months to 180 months to align the test with the proposed Type A test frequency. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves only the extension of the interval between Type A containment leak rate tests and Type C tests for LGS. The proposed surveillance interval extension is bounded by the 15-year ILRT interval and the 75-month Type C test interval currently authorized within NEI 94–01, Revision 3–A. Industry experience supports the conclusion that Types B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section Xl and TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Types A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A and Type C test intervals.

The current frequency associated with a DWBT leakage test is 120 months. If any DWBT test fails to meet the specified limit, the test schedule for subsequent tests shall be reviewed and approved by the NRC. If two consecutive tests fail to meet the specified limit, a test shall be performed at least every 24 months until two consecutive tests meet the specified limit, at which time the test schedule may be resumed. The proposed change will modify this leakage test frequency from 120 months to 180 months. The proposed change is acceptable as the results from previous tests show that the measured drywell-to-suppression chamber bypass leakage at the current TS frequency has been a small percentage of the allowable leakage. Acceptability is further demonstrated by the design requirements applied to the primary containment components and other periodically performed primary containment inspections.

LGS, Units 1 and 2 TS SR 4.6.2.1.e DWBT monitors the combined leakage of three types of pathways: (1) The drywell floor and downcomers, (2) piping externally connected to both the drywell and suppression chamber air space and (3) the suppression chamber to drywell vacuum breakers. This amendment would extend the surveillance interval on the passive components of the test (the first two types of pathways), while retaining the current surveillance interval on the active components (suppression chamber to drywell vacuum breakers).

The proposed amendment also deletes Units 1 and 2 TS 6.8.4.g(a) exceptions previously granted to allow one-time extensions of the ILRT test frequency for LGS. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, the deletion is solely an administrative action that has no effect on any component and no impact on how the unit is operated.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 28, 2019. A publicly-available version is in ADAMS under Accession No. ML19071A111.

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station Technical Specifications (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes that reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. The proposed changes are consistent with the NRC-approved Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–514, Revision 3, ''Revise BWR [Boiling Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.'' The availability of this TS improvement was announced in the **Federal Register** on December 17, 2010 (75 FR 79048), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated. Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure. Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power

District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Robert J. Pascarelli.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 18, 2019. A publicly-available version is in ADAMS under Accession No. ML19108A143.

Description of amendment request: The amendment would revise Hope Creek Generating Station Technical Specification (TS) 3.6.5.1, ''Secondary Containment Integrity,'' Surveillance Requirements (SRs) 4.6.5.1.a and 4.6.5.1.b.2.a. SR 4.6.5.1.a would be revised to address conditions during which the secondary containment pressure may not meet the SR pressure requirements. SR 4.6.5.1.b.2.a would be modified to acknowledge that secondary containment access openings may be open for entry and exit. Additionally, TS Definitions 1.39.d and 1.39.g would be revised to conform to the proposed changes to these two SRs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change addresses conditions during which the secondary containment SRs are not met. The secondary containment is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not increased. The consequences of an accident previously evaluated while utilizing the proposed changes are no different than the consequences of an accident while utilizing the existing four hour Completion Time for an inoperable secondary containment. In addition, the proposed Note for SR 4.6.5.1.a provides an alternative means to ensure the secondary containment safety function is met. As a result, the consequences of an accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not alter the protection system design, create new failure modes, or change any modes of operation. The proposed change does not involve a physical alteration of the plant; and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change addresses conditions during which the secondary containment SRs are not met. Conditions in which the secondary containment is not at a negative pressure are acceptable provided the conditions do not affect the ability of the FRVS [filtration recirculation and ventilation system] to establish the required secondary containment vacuum under post-accident conditions within the time assumed in the accident analysis. This condition is incorporated in the proposed change by requiring an analysis of actual environmental and secondary containment pressure conditions to confirm the capability of the FRVS is maintained within the assumptions of the accident analysis. Therefore, the safety function of the secondary containment is not affected. The allowance for both an inner and outer secondary containment door to be open simultaneously for entry and exit does not affect the safety function of the secondary containment as the doors are promptly closed after entry or exit, thereby restoring the secondary containment boundary.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: March 29, 2019. A publicly-available version is in ADAMS under Accession No. ML19088A126.

Description of amendment request: The amendment proposes a change in Tier 1 (and associated Combined License Appendix C) Figure 2.2.4–1 (Sheet 3) to relocate the auxiliary steam header isolation valve from the same header as the turbine bypass valves to a new header.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not affect the operation or reliability of any system, structure or component (SSC) required to maintain a normal power operating condition or to mitigate anticipated transients without safety-related systems. There is no change to the auxiliary steam header isolation valve safety class or nonsafety-related functions. With the proposed change, the auxiliary steam header isolation valve will continue to perform its nonsafety-related design function of providing isolation at the system interface between the main steam system and auxiliary steam supply system. The operation of the auxiliary steam header isolation valve is not changed, and it remains downstream of the main steam isolation valve (MSIV). The auxiliary steam header isolation valve is not, nor was it, credited in limiting blowdown of a second steam generator in the event of a steam line break upstream of an MSIV concurrent with the failure of the other MSIV. Therefore, there is no impact to the MSS [main steam system] design function of limiting blowdown of a second steam generator in the event of a steam line break upstream of an MSIV concurrent with the failure of the other MSIV, and there is no impact to Chapter 15 evaluations.

Therefore, the proposed amendment does not involve a significant in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect the operation of systems or equipment that could initiate a new or different kind of accident or alter any SSC such that a new accident initiator or initiating sequence of events is created. There is no change to the auxiliary steam header isolation valve safety class or nonsafety-related functions. With the proposed change, the auxiliary steam header isolation valve will continue to perform its nonsafety-related design function of providing isolation at the system interface between the main steam system and auxiliary steam supply system. The operation of the auxiliary steam header isolation valve is not changed, and it remains downstream of the main steam isolation valve (MSIV). The auxiliary steam header isolation valve is not, nor was it, credited in limiting blowdown of a second steam generator in the event of a steam line break upstream of an MSIV concurrent with the failure of the other MSIV. Therefore, there is no impact to the MSS design function of limiting blowdown of a second steam generator in the event of a steam line break upstream of an MSIV concurrent with the failure of the other MSIV, and there is no impact to Chapter 15 evaluations.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect existing safety margins. There is no change to the auxiliary steam header isolation valve safety class or nonsafety-related functions. With the proposed change, the auxiliary steam header isolation valve will continue to perform its nonsafety-related design function of providing isolation at the system interface between the main steam system and auxiliary steam supply system. The operation of the auxiliary steam header isolation valve is not changed, and it remains downstream of the main steam isolation valve (MSIV). The auxiliary steam header isolation valve is not, nor was it, credited in limiting blowdown of a second steam generator in the event of a steam line break upstream of an MSIV concurrent with the failure of the other MSIV. Therefore, there is no impact to the MSS design function of limiting blowdown of a second steam generator in the event of a steam line break upstream of an MSIV concurrent with the failure of the other MSIV, and there is no impact to Chapter 15 evaluations.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: July 27, 2018, as supplemented by letters dated May 3, 2019, and May 17, 2019. A publicly-available version is in ADAMS under Accession Nos. ML18208A619, ML19123A253, and ML19137A343, respectively.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements to permit use of Risk-Informed Completion Times in accordance with Nuclear Energy Institute (NEI) topical report NEI 06–09, Revision 0–A, ''Risk-Informed Technical Specifications Initiative 4b, Risk-Managed Technical Specifications (RMTS) Guidelines.'' Notice of this action was previously published in the **Federal Register** on September 25, 2018 (83 FR 48466). The re-noticing of this action is provided to include two supplements dated May 3, 2019, and May 17, 2019, to the licensee's original application dated July 27, 2018. This re-notice supersedes the **Federal Register** notice of September 25, 2018, in its entirety. The supplements added a new Condition B in Technical Specification 3.7.8, ''Service Water System (SWS)''.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment [change] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change permits the extension of completion times provided risk is assessed and managed within the Risk Informed Completion Time Program. The proposed change does not involve a significant increase in the probability of an accident previously evaluated because the changes involve no change to the plant or its mode of operation. The proposed change does not increase the consequences of an accident because the design-basis mitigation function of the affected systems is not changed and the consequences of an accident during the extended completion time are no different from those during the existing COMPLETION TIME.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS revision does not change the design, configuration, or method of plant operation. The proposed change does not involve a physical alteration of the plant in that no new or different kind of equipment will be installed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change permits the extension of completion times provided risk is assessed and managed within the Risk Informed Completion Time Program. The proposed change implements a risk-informed configuration management program to assure that adequate safety margins are maintained. Application of these new specifications and the configuration management program considers cumulative effects of multiple systems or components being out of service and does so more effectively than the current TS.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 24, 2019. A publicly-available version is in ADAMS under Accession No. ML19114A535.

Description of amendment request: The amendments would revise the South Texas Project, Units 1 and 2, Technical Specification Tables 2.2–1, 3.3–1, and 4.3–1, to change the description of the P–13 permissive interlock for the Reactor Trip System instrumentation. Specifically, the phrases ''Turbine Impulse Chamber Pressure'' and ''Turbine Impulse Pressure'' would be replaced with ''Turbine Inlet Pressure.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to replace the words ''Turbine Impulse Chamber Pressure'' or ''Turbine Impulse Pressure'', as appropriate, with ''Turbine Inlet Pressure'' in the descriptive text associated with the P–13 function of the Reactor Trip System does not involve any physical or design change to the P–13 function. The proposed change is intended to eliminate potential confusion by making the description generically applicable for other turbine types.

Therefore, there is no impact to the probability or consequences of an accident previously evaluated due to the proposed change.

2. Does the proposed amendment create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

Replacing the words ''Turbine Impulse Chamber Pressure'' with ''Turbine Inlet Pressure'' in the descriptive text associated with the P–13 function will not create the possibility of a new or different kind of accident from any accident previously evaluated. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. No new operator actions are created as a result of the proposed change.

Changing the descriptive text associated with the P–13 permissive has no impact on the accidents analyzed in the STPNOC [STP Nuclear Operating Company] Updated Final Safety Analysis Report (UFSAR) and is not an accident initiator. Since this change does not impact any conditions that would initiate an accident, there is no possibility of a new or different kind of accident resulting from this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Changing the descriptive text associated with the P–13 permissive will not affect the margin of safety. The margin of safety presently provided by the Technical Specifications remains unchanged.

The proposed amendment does not affect the design of the facility or system operating parameters, does not physically alter safety-related systems and does not affect the method in which safety-related systems perform their functions.

Therefore, the proposed change does not impact margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kym Harshaw, Vice President and General Counsel, STP Nuclear Operating Company, P.O. Box 289, Wadsworth, TX 77483.

NRC Branch Chief: Robert J. Pascarelli.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1 (Callaway), Callaway County, Missouri

Date of amendment request: March 12, 2019. A publicly-available version is in ADAMS under Accession No. ML19071A281.

Description of amendment request: The amendment would revise the Callaway technical specifications (TSs) to remove slave relay K620 from the scope of TS Surveillance Requirement (SR) 3.3.2.14 testing during shutdown conditions at 18-month intervals and incorporate it into the scope of SR 3.3.2.6 for surveillance testing during power operations, at a frequency in accordance with the Surveillance Frequency Control Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Testing slave relay K620 more frequently than currently required will not increase the probability or the consequences of a previously evaluated accident.

The new turbine controls being installed under a plant modification include new EHC [Electrohydraulic Control] trip bus coils with an impedance sized to allow a small test current to be applied to the trip logic without activating the trip coils. This permits the K620 slave relay to be tested on-line at the frequency used for testing other, similar slave relays in the plant and without any significant increase in the probability of an inadvertent turbine trip. Consequently, the new test scheme for this relay does not increase the probability of a previously evaluated transient (*i.e.,* turbine trip) for Callaway.

Slave relay K620 provides trip signals to the Main Turbine and the Main Feedwater trip logic. Performing this test at the increased frequency will not adversely affect the relay's performance since the new frequency is typical for slave relays that can be tested during plant operation. It is thus reasonable to conclude that the likelihood of relay failure is not increased.

In regard to accident consequences, the change in test frequency for the K620 relay does not affect its required operability. Since the relay's function is not affected, there is no change to how the function is credited or assumed in the plant's accident analysis. The analyzed consequences are thus unaffected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Testing slave relay K620 more frequently than currently required does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Currently, slave relay K620 is tested with the turbine offline since under the current (unmodified) design, the testing of slave relay K620 produces a test current sufficient to trip the main turbine. The new proposed turbine controls include new EHC trip bus coils with an impedance sized to allow a small test current to be applied to the trip logic without activating the trip coils, thus allowing the slave relay test to be performed online. There is no change to the design or function of the relay itself or its associated logic. Thus, no new failure modes are introduced by the replacement of these trip coils.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change only affects the testability of the K620 relay (and thus the frequency at which the relay is tested). The design and function of the K620 slave relay itself are unchanged. No changes to the accident analyses, including any associated assumptions such as instrument setpoints or credited trip functions, are required or being made for this proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037.

NRC Branch Chief: Robert J. Pascarelli.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1 (Callaway), Callaway County, Missouri

Date of amendment request: March 22, 2019. A publicly-available version is in ADAMS under Accession No. ML19081A173.

Description of amendment request: The amendment would revise the Callaway technical specifications (TSs) to eliminate TS Section 5.5.8, ''lnservice Testing Program.'' The proposed change eliminates the Callaway TS Section 5.5.8, to remove requirements duplicated in the American Society of Mechanical Engineers Code for Operations and Maintenance of Nuclear Power Plants (ASME OM Code) Code Case OMN–20, ''Inservice Test Frequency,'' which is approved for use in the Callaway Plant inservice testing program (IST). A new defined term, ''INSERVICE TESTING PROGRAM,'' will be added to TS Section 1.1, ''Definitions.'' The proposed change to the TSs is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, ''Administrative Controls,'' Section 5.5, ''Programs and Manuals,'' by eliminating the ''lnservice Testing Program'' specification (*i.e.,* TS 5.5.8). Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM Code, as clarified by Code Case OMN–20, ''lnservice Test Frequency.'' The remaining requirements in the Section 5.5 IST Program description are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, ''Inservice Testing Program,'' is added to Section 1.1 of the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. lnservice test frequencies under Code Case OMN–20 are equivalent to the current testing periods allowed by the TS with the exception that test intervals greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated, as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with test intervals greater than 2 years to be extended by 6 months (consistent with code case OMN–20) to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037.

NRC Branch Chief: Robert J. Pascarelli.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Florida, Inc., et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of application for amendment: January 16, 2019.

Brief description of amendment: The amendment approved revision 1 to the Independent Spent Fuel Storage Installation-Only Emergency Plan for the CR–3 Site.

Date of issuance: May 3, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 257. A publicly-available version is in ADAMS under Accession No. ML19080A186; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–72: This amendment revised the License.

Date of initial notice in ***Federal Register****:* February 12, 2019 (84 FR 3507).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2019.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: April 25, 2018, as supplemented by letter dated March 26, 2019.

Brief description of amendments: The amendments revised the expiration date of an existing Note for Technical Specification 3.8.3, ''Diesel Fuel Oil,'' to allow, on a one-time basis, the main fuel oil storage tank to be inoperable for up to 14 days for the purpose of performing required inspection, cleaning, and any necessary repair activities.

Date of issuance: May 6, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 290 and 318. A publicly-available version is in ADAMS under Accession No. ML19018A206; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* July 3, 2018 (83 FR 31183).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 6, 2019.

No significant hazards consideration comments received: No.

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (River Bend), West Feliciana Parish, Louisiana

Date of amendment request: April 30, 2018, as supplemented by letter dated October 18, 2018.

Brief description of amendment: The amendment revised the River Bend Emergency Plan to adopt an Emergency Action Level scheme based on Nuclear Energy Institute (NEI) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' dated November 2012, which was endorsed by the NRC by letter dated March 28, 2013.

Date of issuance: May 14, 2019.

Effective date: As of the date of issuance and shall be implemented within 365 days from the date of issuance.

Amendment No.: 197. A publicly-available version is in ADAMS under Accession No. ML19070A062; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–47: The amendment revised the River Bend Emergency Plan.

Date of initial notice in ***Federal Register****:* July 31, 2018 (83 FR 36975). The supplemental letter dated October 18, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 2019.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: May 30, 2018, as supplemented by letters dated February 7 and April 17, 2019.

Brief description of amendment: The amendment revised Technical Specification 3.3.5, ''Diesel Generator (DG)—Undervoltage Start (UV Start),'' Surveillance Requirement 3.3.5.2a by adding a channel calibration requirement for the combined time delay setpoints for the degraded voltage sensing relay and the degraded voltage time delay relay.

Date of issuance: May 13, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 268. A publicly-available version is in ADAMS under Accession No. ML19107A053; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–20: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* August 14, 2018 (83 FR 40347). The supplemental letters dated February 7 and April 17, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: September 28, 2018, as supplemented by letter dated February 4, 2019.

Brief description of amendment: The amendments authorized changes to Appendix E of the VEGP Units 3 and 4 Physical Security Plan to describe the Transitional Security Measures that will be implemented in the event that Unit 3 is ready to load fuel and begin operation with a contiguous Protected Area boundary and vehicle barrier system, and where a secure boundary is needed between VEGP Units 3 and 4. In addition, the amendment revised the plant-specific emergency planning inspections, tests, analyses, and acceptance criteria in Appendix C of the VEGP Unit 4 Combined License, associated with the presence of a security barrier between the Technical Support Center and the Unit 4 control room.

Date of issuance: April 30, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 160 (Unit 3) and 158 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML19092A449. The documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Combined Licenses Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register****:* January 8, 2019 (84 FR 88). The February 4, 2019, supplemental letter provided additional information that did not change the scope or the conclusions of the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 9, 2018, as supplemented by letters dated April 11, 2018, and January 30, 2019.

Brief description of amendments: The amendments authorized changes to the Essential Raw Cooling Water Motor Control Center Breakers and authorized revision of the Updated Final Safety

Analysis Report (UFSAR) to describe the normal and alternate power sources for the ERCW system.

Date of issuance: May 7, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 344—Unit 1 and 337—Unit 2. A publicly-available version is in ADAMS under Accession No. ML19058A029; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the UFSAR.

Date of initial notice in ***Federal Register****:* June 5, 2018 (83 FR 26107). The supplemental letter dated January 30, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 7, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of May 2019.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–11453 Filed 6–3–19; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 3, 10, 17, 24, July 1, 8, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 3, 2019

There are no meetings scheduled for the week of June 3, 2019.

Week of June 10, 2019—Tentative

There are no meetings scheduled for the week of June 10, 2019.

Week of June 17, 2019—Tentative

Tuesday, June 18, 2019

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting); (Contact: Jason Lising: 301–287–0569)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 20, 2019

10:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting), (Contact: Andrea Mayer: 301–415–1081)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 24, 2019—Tentative

There are no meetings scheduled for the week of June 24, 2019.

Week of July 1, 2019—Tentative

There are no meetings scheduled for the week of July 1, 2019.

Week of July 8, 2019—Tentative

There are no meetings scheduled for the week of July 8, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of May, 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–11792 Filed 5–31–19; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

TIME AND DATE: May 30, 2019, at 3:00 p.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Items.
2. Financial Matters.

On May 30, 2019, the members of the Temporary Emergency Committee of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2019–11749 Filed 5–31–19; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85954; File No. SR–NASDAQ–2019–044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Allow an Odd Lot-Sized Order To Be Eligible for the Midpoint Extended Life Order

May 29, 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 May 20, 2019, The Nasdaq Stock Market LLC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow an odd lot-sized Order to be eligible for the Midpoint Extended Life Order. The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to allow an odd lot [3]-sized Order [4] to be eligible for the Midpoint Extended Life Order.[5] The Midpoint Extended Life Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until the Holding Period of one half of a second has passed after acceptance of the Order by the System. Once a Midpoint Extended Life Order becomes eligible to execute, the Order may only execute against other eligible Midpoint Extended Life Orders. Nasdaq adopted the Midpoint Extended Life Order to address the needs of market participants that focus their trading on receiving midpoint execution where time to execution is less important when working to meet their long term investment needs. Since its implementation in 2018,[6] the Midpoint Extended Life Order Type has achieved its design expectations. One metric that Nasdaq measures is the change in the NBBO after a Midpoint Extended Life Order executes. In the month of April 2019, the NBBO price was the same as it was prior to a Midpoint Extended Life Order execution approximately 88–90 percent of the time one second later. This shows that the executions are generally not impacting the overall market price. Furthermore, Nasdaq believes the sample size is robust as there are approximately 12.5 million shares transacted as Midpoint Extended Life Orders a day.

Currently, a Midpoint Extended Life Order must be entered with a size of at least one round lot and any shares of a Midpoint Extended Life Order remaining after an execution that are less than a round lot will be cancelled by the System. Over the last several years, the number of high priced securities has increased (*see* Figure 1) and the number of stock splits have decreased (*see* Figure 2).

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[3] The terms ''normal unit of trading'' or ''round lot'' means [sic] the size generally employed by traders when trading a particular security, which is 100 shares in most instances. The term ''odd lot'' means a size of less than one normal unit of trading. *See* Rule 4703(b).

[4] The term ''Order'' means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *See* Rule 4701(e).

[5] *See* Rule 4702(b)(14).

[6] *See* Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR–NASDAQ–2017–074).

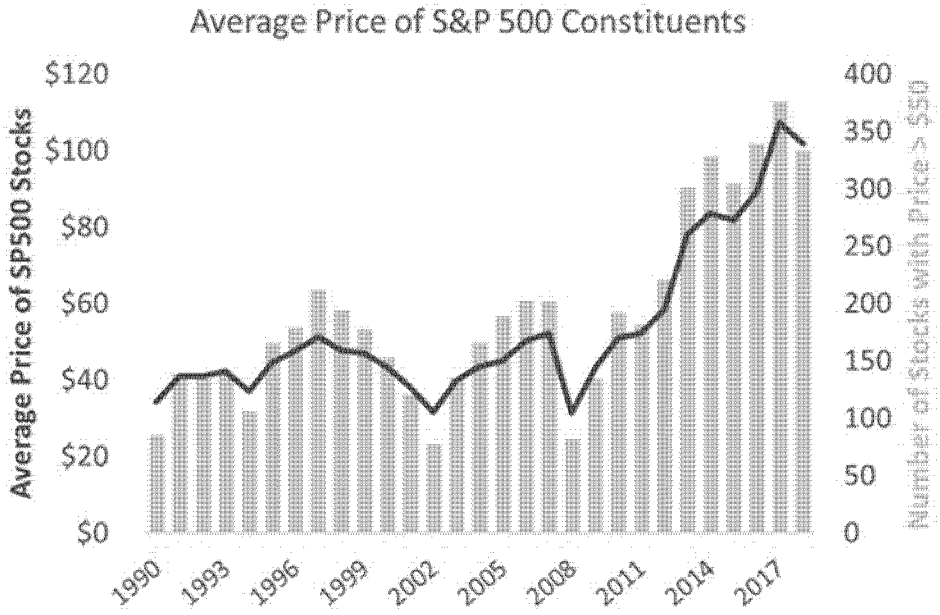

Figure 1 (Source: Nasdaq Economic Research)

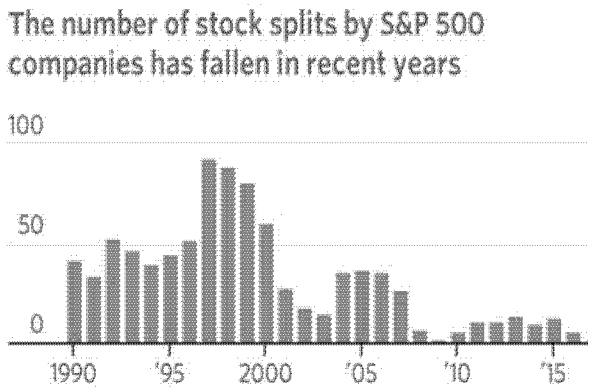

Figure 2 (Source: Nasdaq Economic Research)

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There is a notably large percentage of odd lot trades in relatively high priced securities. For example, in October 2018, such transactions accounted for approximately 5 percent of total consolidated volume during the month, and accounted for 30 percent of all transactions occurring in the month across all securities. In contrast, for stocks with a price of $500 or more during the same timeframe the Exchange observed that 39 percent of total consolidated volume was due to odd lot trades and 85 percent of all transactions occurring in the month were odd lots. Thus, a significant number of higher priced securities have transactions occurring in odd lot transactions. The Exchange believes that allowing entry of odd lot-sized Midpoint Extended Life Orders will eliminate a limitation of the Order and give users more control over their Orders.

In the first quarter of 2019 for example, the Exchange executed approximately 2,000,000 trades in one issuer whose stock has a price greater than $1,000, with an average trade size of approximately 34 shares. Using this stock's closing price of approximately $1,700 for March 2019, the notional value of a 34 share trade would be $56,000. Most would agree that $56,000 in value does not represent a small trade. For this stock to execute as a Midpoint Extended Life Order, the average trade size would need to triple to achieve the current minimum Order size of 100 shares or one round lot for this particular stock, and as such has only traded 20 times as a Midpoint Extended Life Order in the first quarter of 2019. Nasdaq believes that eliminating the minimum Order size from the Midpoint Extended Life Order will provide like-minded investors the opportunity to transact in high-priced stocks such as the example above in an ecosystem where the quote remains stable approximately 88—90 percent of time one second post-execution,[7] notably higher than off-exchange venues where the quote remains stable 75–80 percent of time one second post-execution based on Nasdaq's internal assessment.

[7] As of April 2019.

As of March 12, 2019, there are nearly 550 securities that trade on the Exchange that are priced greater than $100, 76 securities greater than $250, 24 securities greater than $500, and 10 securities over $1,000. Odd lot Orders account for 46 percent of trades for stocks above $100, and for securities over $500 this number rises to over 85 percent. Odd lot transactions now represent a large percentage of trades, yet are ineligible for the Midpoint Extended Life Order, even for transactions that would be identified by many as institutional sized and some even being classified as a block trade.[8]

Nasdaq recognizes that not all participants may desire to execute odd lots. Such participants may elect to use the Minimum Quantity Order Attribute to avoid such transactions, much like they would do for executing on the Nasdaq Book. Nasdaq notes that other exchanges and many Alternative Trading Systems (ATSs) allow for odd lots and customers there use minimum quantity attributes to manage the execution sizes for their orders. The Exchange notes that the Minimum Quantity Order Attribute is limited to Orders of at least one round lot upon entry.[9] Consequently, members entering odd lot-sized Midpoint Extended Life Orders would not be able to limit their interaction with other odd lot-sized Midpoint Extended Life Orders based on size, which the Exchange believes is appropriate because members understand the limitation and have made the decision to accept such possible interaction.

In proposing the Midpoint Extended Life Order round lot requirement, the Exchange noted that round lots would promote size and provide members with the most efficient processing of Midpoint Extended Life Orders.[10] This was based on the Exchange's observation at the time that many participants that would likely avail themselves of Midpoint Extended Life Orders tend to route their Orders in round lot sizes, and that many strategies are modeled based on receipt of a round lot execution. Nasdaq has since observed that the members that use Midpoint Extended Life Orders are now modeling strategies based on individual securities or grouping of securities based on attributes such as price, average daily volume, and volatility. Consequently, round lot size is no longer a wide-spread need among users of Midpoint Extended Life Orders. Notwithstanding, as noted above a member may elect to associate a Minimum Quantity Order Attribute with its round lot-sized Midpoint Extended Life Order to avoid interaction with odd lot-sized Midpoint Extended Life Orders, which because of their size may not be attractive as a contra-side Order to some market participants.[11] Last, the Exchange notes that most other Order Types under Rule 4702 allow entry of odd lot-sized Orders. Permitting entry of odd lot-sized Midpoint Extended Life Orders will increase liquidity in the Order Type and improve the chances that a Midpoint Extended Life Order will receive an execution for higher priced stocks.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing for more widespread use of Midpoint Extended Life Orders, particularly in high priced securities. Nasdaq adopted the Midpoint Extended Life Order to address the needs of market participants that focus their trading on receiving midpoint execution where time to execution is less important when working to meet their long term investment needs. As described above, the Exchange believes the proposed change will benefit market participants by expanding the available sizes of orders available which in turn will provide greater opportunities for interaction in higher priced securities in Midpoint Extended Life Orders. The Exchange notes that members with round lot-sized Midpoint Extended Life Orders that are seeking to interact with only other round lot-sized Midpoint Extended Life Orders may do so by applying the Minimum Quantity Order Attribute. Members that have odd lot-sized Midpoint Extended Life Orders are unable to similarly limit the size of Order [sic] with which they interact, since the Minimum Quantity Order Attribute is limited to Orders with a size of at least one round lot. The Exchange believes that this is consistent with the Act because it is the same limitation that all other Orders have with respect to the use of Minimum Quantity Order Attribute and a member may merely enter a round lot-sized Midpoint Extended Life Order with a Minimum Quantity Order Attribute if it does not want to interact with odd lot-sized Midpoint Extended Life Orders. Moreover, the Exchange believes the limitation is consistent with the Act because members understand the limitation and have made the decision to accept possible interaction with Orders of any size. For these reasons, the Exchange believes that the proposed change is consistent with the purposes of the Order Type.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Midpoint Extended Life Order was adopted as a pro-competitive measure to improve participation on the Exchange by allowing certain market participants that may currently be underserved on regulated exchanges to compete based on elements other than speed. The proposed change is a natural extension of the original proposal because it broadens interaction opportunities in Midpoint Extended Life Orders, particularly in higher priced stocks, while also ensuring that market participants use the Order Type consistent with its original purposes. In sum, the proposed change will not burden competition but rather may promote competition for liquidity in Midpoint Extended Life Orders by expanding the pool of market participants that may seek to enter such Orders. These market participants may have otherwise found the cost of a round lot Order in the securities in which they desire to trade as Midpoint Extended Life Orders too high. The proposed change will not place a burden on competition among market venues, as any market may adopt an order type that operates like the Midpoint Extended Life Order, including allowing for the execution of odd lot-sized orders, as proposed herein.

[8] *See, e.g., https://otctransparency.finra.org/otctransparency/AtsBlocks* (providing Block Data of $100,000 transactions and greater).

[9] *See* Rule 4703(e).

[10] *See supra* note 6.

[11] For example, an odd lot-sized Midpoint Extended Life Order takes on less risk as it rests in the Holding Period for any given security. As noted above, this may not be the case when comparing an odd lot-size Midpoint Extended Life Order in a high priced security and a Midpoint Extended Life Order in a low priced security of a round lot size.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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–NASDAQ–2019–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–044, and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–11545 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85960; File No. SR–NYSEAMER–2019–21]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-location Services

May 29, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 21, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to co-location services to update the description of the access to trading and execution systems provided with the purchase of access to the co-location local area networks. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule related to co-location[4] services offered by the Exchange to update the description of the access to trading and execution services and connectivity to data provided to Users[5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network,

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE National, Inc. (''NYSE National'' and together with NYSE, NYSE Arca, and NYSE Chicago, Inc., the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

local area networks available in the data center.

To implement the changes, the Exchange proposes to amend paragraph one of General Note 4, which describes the access to trading and execution systems which a User receives when it purchases access to the LCN or IP network.[6]

The Exchange will announce the implementation date through a customer notice.

As set forth in the first paragraph of General Note 4, when a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the Exchange and the SRO Affiliates (together, the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO.[7] The Exchange proposes to revise such paragraph to reflect that a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of Global OTC (''Global OTC System''), subject to authorization by Global OTC.

In order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User any applicable fees charged to its subscribers by Global OTC. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.

The Exchange provides Users access to the Global OTC System and the Exchange Systems (''Access'') as a convenience to Users. Use of Access is completely voluntary. The Exchange is not aware of any impediment to third parties offering Access. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Global OTC

Global OTC is an affiliate of the Exchange, which has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8]

Unlike the NYSE Exchanges, Global OTC is not a national securities exchange registered with the Securities and Exchange Commission (''Commission'') under Section 6 of the Act.[9] Rather, Global OTC is an alternative trading system (''ATS'') [10] operated by a broker-dealer, a member of the Financial Industry Regulatory Authority. It facilitates transactions in over-the-counter (''OTC'') equity securities, providing publicly displayed, firm, auto-executable prices in the OTC securities marketplace. There is no overlap in the securities traded on the NYSE Exchanges and Global OTC: Members trade National Market System (''NMS'') securities on the NYSE Exchanges,[11] but Global OTC subscribers cannot trade NMS securities on Global OTC.

The Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers, including two ATSs.[12] Of those, the Exchange believes the OTC Markets ATS is the most comparable to Global OTC.[13] Both are inter-dealer quotation systems for OTC securities.[14] Global OTC and the OTC Markets' ATS are not fungible, however. The OTC Markets' ATS is a trade messaging system that displays market makers quotes and does not offer automatic executions. While Global OTC provides a limit order book, displays participants' orders, and executes orders pursuant to price/time priority, OTC Markets' ATS displays market makers' quotes by price priority, not time priority. In sum, OTC Markets' ATS is a market maker intermediary, whereas Global OTC is a trading platform.

The Proposed Amendments

To implement the change, the Exchange proposes to revise the first paragraph of General Note 4 as follows:

- Amend the first sentence to state that when a User purchases access to the LCN or IP network, it receives the ability to access the Global OTC System as well as the Exchange Systems, subject to authorization by Global OTC, the Exchange or Affiliate Exchange, as applicable;
- Amend the third sentence to note that a User can change the access to the Global OTC System that it receives at any time, subject to authorization by Global OTC; and
- Add a new fifth sentence stating that ''Global OTC offers access to the Global OTC System to its subscribers, such that a User does not have to purchase access to the LCN or IP network to obtain access to the Global OTC System.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only

[6] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126) (notice of filing and immediate effectiveness of proposed rule change amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule related to co-location services to increase LCN and IP network fees and add a description of access to trading and execution services and connectivity to Included Data Products).

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 79672 (December 22, 2016), 81 FR 96080 (December 29, 2016) (SR–NYSEMKT–2016–63), fn. 21. Global OTC is operated by Archipelago Trading Services, Inc., which is a broker-dealer subsidiary of NYSE Group, Inc. (''NYSE Group''). NYSE Group is also the parent company of the Exchange.

[9] 15 U.S.C. 78f. Global OTC is not required to register as a national securities exchange because it operates under an exemption from the requirement to register as an exchange. *See* 17 CFR 240.3a1–1(a) and 17 CFR 240.300 through 304.

[10] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[11] *See* 17 CFR 242.600.

[12] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees). Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

[13] The OTC Markets' ATS is OTC Link. Global OTC is substantially smaller than OTC Markets' ATS: Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' ATS market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[14] The third inter-dealer quotation system is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product

Continued

incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow Users to connect to the Global OTC System, thereby increasing Users' ability to tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of access that best suits their needs. Global OTC provides publicly displayed, firm, auto-executable prices in the OTC securities marketplace, and the Exchange believes that allowing Users to connect to the Global OTC System would promote price discovery and transparency in the OTC market, benefiting participants in such market. At the same time, Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable.

The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they would make the description of Access more accessible and transparent by including Global OTC, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network, avoiding any potential investor confusion. The proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network. The proposed rule change would also make clear that Access to each of the Exchange Systems and the Global OTC System is provided on the same terms. All Users that voluntarily select to access the LCN or IP network receive Access to the Exchange Systems and the Global OTC System, and are not subject to a charge for such Access above and beyond the fee paid for the relevant LCN or IP network access.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act for multiple reasons.

The proposed rule change is reasonable and equitable because, as stated above, it would also make clear that Access to each of the Exchange Systems and Global OTC System is provided on the same terms. The Exchange further believes that the Access to the Global OTC System described herein is equitably allocated and not unfairly discriminatory because all Users that voluntarily select to access the LCN or IP network receive the same Access, and are not subject to a charge for Access to Global OTC above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable. In addition to the service being completely voluntary, it is available to all Users on an equal basis. Users that opted to Access the Global OTC System would not receive access that is not available to all Users.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the

that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[16] *See* 78 FR 50471, *supra* note 5, at 50471. NYSE, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–31, SR–NYSEArca–2019–40, and SR–NYSENAT–2019–13.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(4).

active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users that purchase access to the LCN or IP network with Access to the Global OTC System does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering Access to the Global OTC System, the Exchange gives each User additional options for addressing its access needs, responding to User demand for access options. The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor. Users that opt to Access the Global OTC System would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[23]

[20] 15 U.S.C. 78f(b)(8).

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would allow Users to have access to the Global OTC System during the operative delay period and would provide Users with options for connectivity to trading and execution services and the availability of products and services. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–21 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11557 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85957; File No. SR–NASDAQ–2019–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Complementary Services Offered by the Exchange Under Rule IM–5900–7

May 29, 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 May 16, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the treatment of direct listings including Level 2 American Depository Receipts (ADRs) under IM–5900–7, specify that an Eligible New Listing includes Level 3 ADRs, update the values of certain services, modify the market advisory tools provided under IM–5900–7 to certain new listings, and make certain other clarifying changes.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq offers complimentary services under IM–5900–7 to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering (other than a company listed under IM–5101–2), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, or in conjunction with a business combination that satisfies the conditions in Nasdaq IM–5101–2(b) (''Eligible New Listings'') and to companies (other than a company listed under IM–5101–2) switching their listing from the New York Stock Exchange (''NYSE'') to the Global or Global Select Markets (''Eligible Switches'').[3] Nasdaq believes that the complimentary service program offers valuable services to newly listing companies, designed to help ease the transition of becoming a public company or switching markets, and makes listing on Nasdaq more attractive to these companies. The services offered include a whistleblower hotline, investor relations website, disclosure services for earnings or other press releases, webcasting, market analytic tools, and may include market advisory tools such as stock surveillance (collectively the ''Service Package'').[4]

Direct Listing

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. Nasdaq previously adopted requirements under IM–5315–1 applicable to such companies listing on the Nasdaq Global Select Market[5] and now proposes to include in the definition of an ''Eligible New Listing'' that receives complimentary services under IM–5900–7 a company listing in connection with a direct listing. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to direct listings.[6]

American Depository Receipts

U.S. investors often hold equity securities of foreign issuers in the form of ADRs. An ADR is a security that represents an ownership interest in a specified number of foreign securities that have been placed with a depositary financial institution by the issuer or holders of such securities. An ADR is in essence a substitute trading mechanism for foreign securities allowing the issuer or holder to transfer title to the underlying foreign securities by delivery of the ADR. The depositary is typically a U.S. bank or trust company, and it usually appoints a custodian to hold the deposited securities in the home market of the foreign issuer.[7] The custodian is often a bank, and may be a subsidiary or branch of the depositary or a third-party institution with which the depositary has a contractual custodian relationship.

In order to list ADRs, Nasdaq requires that such ADRs be sponsored. A sponsored ADR facility is typically established jointly by an issuer and a depositary. The foreign issuer of the deposited securities typically enters into a deposit agreement with the depositary. For a sponsored ADR, both the depositary and the foreign company sign the F–6 registration statement under the Securities Act of 1933. The deposit agreement sets out the rights and responsibilities of the issuer and the depositary, and the ADR holders as third party beneficiaries. Each ADR holder becomes a party to such agreement through its holding of the ADR.

Market participants describe sponsored facilities in terms of three categories, based on the extent to which the issuer of the deposited securities has accessed the U.S. securities market. A ''Level 1 facility'' is an ADR facility the ADRs of which trade in the U.S. over-the-counter market and the foreign issuer is not required to register with or report to the Commission under Section 12 or 15 of the Exchange Act. ''Level 2'' refers to ADRs that are listed on a U.S. stock exchange by a foreign issuer that becomes subject to certain SEC reporting requirements,[8] but the foreign issuer has not sold ADRs in the United States in order to raise capital or effect an acquisition. ''Level 3'' denotes ADRs that are listed on a U.S. stock exchange where the foreign issuer has sold ADRs in the United States in a registered public offering. A foreign issuer can apply to list Level 2 or Level 3 ADRs on any of Nasdaq's market tiers.

Nasdaq proposes to include Level 2 ADRs in the definition of an ''Eligible New Listing'' that receives complimentary services under IM–5900–7 when the ADRs are listed in connection with a direct listing under IM–5315–1(c). Nasdaq also proposes to specify that an Eligible New Listing includes Level 3 ADRs by stating that the rule reference in IM–5900–7 to listing ''in connection with [the company's] initial public offering'' means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company's home market. Such companies would receive the same services under IM–5900–7, with the same value, as any other Eligible New

[3] *See* Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122) (adopting IM–5900–7); Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (adopting changes to IM–5900–7); Exchange Act Release No. 78806 (September 9, 2016), 81 FR 63523 (September 15, 2016) (SR–NASDAQ–2016–098); Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663 (November 28, 2016) (SR–NASDAQ–2016–106); Exchange Act Release No. 82791 (February 28, 2018), 83 FR 9354 (March 5, 2018) (SR–NASDAQ–2018–15); Exchange Act Release No. 82976 (March 30, 2018), 83 FR 14683 (April 5, 2018) (SR–NASDAQ–2018–23).

[4] In addition, all companies listed on Nasdaq receive other standard services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

[5] Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019).

[6] Section 907.00 of the NYSE Listed Company Manual provides that for the purposes of this Section 907.00, the term ''Eligible New Listing'' means ''any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering . . .'' *See* Exchange Act Release No. 68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR–NYSE–2012–44); As subsequently amended Section 907.00 of the NYSE Listed Company Manual now provides that ''the term ''Eligible New Listing'' means (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).''

[7] ADRs have many characteristics of a domestic equity security but also provide U.S. investors with several attributes that are absent in direct ownership of foreign securities. The depositary (or the custodian) monitors the declaration of dividends, collects them and converts them to U.S. dollars for distribution. In addition, the clearance and settlement process for ADRs generally is the same as for other domestic securities that are traded in the U.S. markets. Thus, investors can own an interest in securities of foreign issuers while holding securities that trade, clear and settle within automated U.S. systems and within U.S. timeframes.

[8] Following their listing on Nasdaq, such companies will also be required to register and file annual reports under the Exchange Act with the Commission.

Listing. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to companies listing ADRs in connection with initial public offering or through a direct listing.[9]

Other Changes

As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization of $750 million or more currently receive a choice of market advisory tools, including a monthly ownership analytics and event driven targeting tool, as described in IM–5900–7(a)(iii). Nasdaq has determined to discontinue providing this tool because over time Nasdaq observed that it receives minimal interest from Nasdaq customers, in particular because there is considerable overlap in services with the stock surveillance tool.[10] Accordingly, Nasdaq proposes to remove the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM–5900–7(a) and to renumber the remaining market advisory tools accordingly.[11]

Nasdaq also proposes to update the values of the services contained in IM–5900–7 to their current values. Depending on a company's market capitalization and whether it is an Eligible New Listing or an Eligible Switch, the total revised value of the services provided ranges from $151,000 to $828,000, and one-time development fees of approximately $5,000 are waived.[12]

The proposed rule change will be operative for new listings on or after the effectiveness of this rule filing. Companies that list before that date will continue to receive services as described in the current rule.

Finally, Nasdaq also proposes to make non-substantive changes to update the introductory note in IM–5900–7 and to include the specific operative date of the proposed rule change to ease understanding of the rule.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies, including ADRs and direct listings, are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq also believes that the proposed rule change is consistent with the provisions Sections 6(b)(4),[15] 6(b)(5),[16] and 6(b)(8),[17] in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq faces competition in the market for listing services,[18] and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. All similarly situated companies are eligible for the same package of services. Nasdaq previously created different tiers of services based on a market capitalization. As noted in the Service Package filings, Nasdaq believes that it is appropriate to offer different services based on a company's market capitalization given that larger companies generally will need more and different governance, communication and intelligence services.[19]

Nasdaq also believes it is reasonable, and not unfairly discriminatory, to offer complimentary services to a foreign company listing Level 2 ADRs or a domestic company listing in connection with a direct listing under IM–5315–1. Such companies are similar to other Eligible New Listings, such as initial public offerings of domestic companies, and will have increased need to focus on identifying and communicating with its shareholders because they are listing on a national securities exchange in the U.S. for the first time. Like the other Eligible New Listings that receive complimentary services under the existing rule, these companies are transitioning to the traditional U.S. public company model and the complimentary services provided will help ease that transition.[20] In addition, these companies will be purchasing many of these services for the first time, and offering complimentary services will provide Nasdaq Corporate Solutions and third-party service providers the opportunity to demonstrate the value of its services and forge a relationship with the company at a time when it is choosing its service providers. For these reasons, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer the services to a foreign company listing Level 2 ADRs or a domestic company listing in connection with a direct listing under IM–5315–1. To the contrary, this

[9] *See* footnote 6 above. Section 907.00 of the NYSE Listed Company Manual provides that ''an ''equity security'' means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts.'' *See* Exchange Act Release No. 68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR–NYSE–2012–44).

[10] Currently no company receives the monthly ownership analytics and event driven targeting service from Nasdaq.

[11] The revised package of services will maintain the same approximate retail value as the one currently provided because Nasdaq presumed that a company would use stock surveillance, which has an approximate retail value of $56,500 as revised ($56,000 previously), and global targeting, which has an approximate retail value of $44,000 rather than the monthly ownership analytics and event driven targeting, which has an approximate retail value of $48,000, because there is considerable overlap between the latter and the stock surveillance service.

[12] The exact values are set forth in proposed IM–5900–7. Under the current rule the stated value of the services provided ranges from $150,000 to $824,000, and one-time development fees of approximately $5,000 are waived. In describing the total value of the services for companies that can select more than one market advisory tool, Nasdaq presumes that a company would use stock surveillance, which has an approximate retail value of $56,500 as revised ($56,000 previously), and global targeting, which has an approximate retail value of $44,000. Companies could, of course, select different combinations of the three services offered, but these other combinations would have lower total approximate retail values. *See* Exchange Act Release No. 78392 (July 22, 2016), 81 FR 49705, 49706 n.10 (July 28, 2016) (Notice of Filing for SR–NASDAQ–2016–098).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(4).

[16] 15 U.S.C. 78f(5).

[17] 15 U.S.C. 78f(8).

[18] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

[19] Exchange Act Release No. 65963, 76 FR at 79265.

[20] Although companies listing Level 2 ADRs may have prior experience being a public company in their home country, they, nonetheless, will be transitioning to the traditional public company model in the United States. Following their listing on Nasdaq, such companies will also be required to register and file annual reports under the Exchange Act with the Commission.

proposed change will eliminate a distinction between companies listing common stock or ADRs through a direct listing and companies listing through an IPO.

Nasdaq believes that the proposed change to specify that the rule reference in IM–5900–7 to listing ''in connection with [the company's] initial public offering'' means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company's home market is consistent with Section 6(b)(5) of the Exchange Act because it will provide transparency in the rules and address an ambiguity by specifying that listing of Level 3 ADRs on Nasdaq is considered an initial public offering notwithstanding that the issuer of ADRs may already be a public company in their home country.

As described above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization of $750 million or more currently receive a choice of market advisory tools, including a monthly ownership analytics and event driven targeting tool, as described in IM–5900–7(a)(iii). Based on Nasdaq's experience with offering this service, Nasdaq has determined to discontinue providing this tool because over time Nasdaq observed that this tool receives minimal interest from Nasdaq customers, in particular because the stock surveillance tool and the monthly ownership analytics and event driven targeting tool have considerable overlap between these services. Nasdaq believes that the removal of the monthly ownership analytics and event driven targeting tool is not unfairly discriminatory because all similarly situated companies are eligible for the same package of services. Moreover, no company currently uses this service.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act [21] that updating the values of the services within the rule is necessary,[22] and Nasdaq does not believe this update has an effect on the allocation of fees nor does it permit unfair discrimination, as issuers will continue to receive the same services, except for the monthly ownership analytics and event driven targeting tool, which will be removed as described above. Further, this update will enhance the transparency of Nasdaq's rules and the value of the services it offers companies, thus promoting just and equitable principles of trade. As such, the proposed rule change is consistent with the requirements of Section 6(b)(4) and (5) of the Exchange Act.

Finally, Nasdaq notes that the proposed change to update the introductory note in IM–5900–7 and to include the specific operative date of the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act because it will clarify the rule without making any substantive change.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule changes reflect that competition, but do not impose any burden on the competition with other exchanges. Rather, Nasdaq believes the proposed changes will result in more potential listings being eligible to receive the package and therefore will enhance competition for new listings of ADRs and companies listing in connection with a direct listing under IM–5315–1. Finally, the clarification that listing of Level 3 ADRs on Nasdaq is considered an initial public offering in the United States will not impose any burden on competition because it will provide transparency in the rules and eliminate an ambiguity. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to companies listing ADRs in connection with initial public offering.[24]

Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. [27]

A proposed rule change filed under Rule 19b–4(f)(6) [28] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, Nasdaq has asked the Commission to waive the 30-day operative delay to allow Nasdaq to offer the Service Package to any companies listing ADRs or common stock through a direct listing during such 30-day period. In addition, Nasdaq has asked the Commission to waiver the 30-day operative delay in order to immediately (i) reflect the accurate values of the complimentary services in Nasdaq's rules, (ii) specify that

[21] 15 U.S.C. 78s(b).

[22] *See* Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (footnote 39 and accompanying text: ''We would expect Nasdaq, consistent with Section 19(b) of the Exchange Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.'')

[23] *See* Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)).

[24] *See* footnote 9 above.

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6).

[27] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

companies listing Level 3 ADRs on Nasdaq are considered to be listing in connection with an initial public offering in the United States, and (iii) remove the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM–5900–7(a).

The Commission notes that Nasdaq's proposal to offer the Service Package to any companies listing ADRs or common stock through a direct listing is substantially similar to the rules of another exchange that were approved previously by the Commission as consistent with the Act after being published in the **Federal Register** for notice and comment.[30] In addition, the Commission notes that the other proposed amendments to Nasdaq's rules would enhance the transparency of IM–5900–7 and eliminate a service that is not used by any listed company. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[31]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NASDAQ–2019–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–040. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–040, and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11564 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Securities Exchange Act Release No. 68143, *note* 6 *supra.*

[31] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85961; File No. SR–NYSE–2019–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Listing Fee Schedule for Pre-Revenue Companies

May 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 16, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a listing fee schedule specific to companies that have not generated any significant revenues at the time of their original listing. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Global Market Capitalization Test (as set forth in Section 102.01C of the Exchange's Listed Company Manual (the ''Manual'')) allows the Exchange to list companies that have not yet recorded any significant revenues, provided the issuer has at least a $200 million global market capitalization and meets the other requirements for listing. These companies are typically engaged in research and development (in many cases they are biotechnology companies focused on developing new drug candidates) or are in the early stages of commercialization of a product.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Generally, a company of this kind relies primarily on the proceeds from its initial public offering to fund its operations. As such, the fees charged by the Exchange represent a more significant expense for these companies than they do for other newly-listed companies and in many cases these fees are an impediment to the Exchange in competing for the listing of these companies.

To address the issues described above, the Exchange proposes to amend Section 902.02 of the Manual to adopt a discounted annual fee schedule for newly-listed companies that list on or after June 1, 2019 and have not recorded in excess of $5 million of revenue in either (i) the most recent completed fiscal year prior to listing or (ii) during the year of listing through the most recently completed fiscal quarter before the listing date (''Pre-Revenue Companies'').[4] The Annual Fees of any company that qualifies as a Pre-Revenue Company at the time of listing will be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-fourth of the applicable Annual Fee rate. In addition, the total fees (including Listing Fees and Annual Fees, but excluding Listing Fees paid at the time of initial listing) that may be billed to such an issuer during this period will be subject to a $25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. This fee cap is subject to the same exclusions as apply in relation to the $500,000 per year fee cap described under ''Total Maximum Fee Payable in a Calendar Year.'' If there are one or more fiscal quarters remaining in the calendar year after the conclusion of the period described in this paragraph, the issuer will, on a prorated basis, be billed the regular Annual Fee subject to the $500,000 total fee cap for the remainder of that calendar year.

The Exchange believes the proposed fee schedule for Pre-Revenue Companies is reasonable, as paying the Exchange's fees is more burdensome for these early stage companies than it is for companies that generate significant revenues from operations. The Exchange believes that it is reasonable to apply the reduced fee level for a limited period, as Pre-Revenue Companies typically begin to generate significant revenues from operations within three years from the time of initial listing.

The proposed rule change would not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to adopt the proposed separate fee schedule for Pre-Revenue Companies, as those companies have limited resources and the Exchange's fees are more burdensome for them than they are for companies that are generating significant revenues from operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2019–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–30. 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

[4] The Exchange will rely on a company's revenues as reported in its SEC filings for purposes of determining whether it qualifies as a Pre-Revenue Company.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–30 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11560 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85958; File No. SR–NYSEARCA–2019–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services

May 29, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 21, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to co-location services to update the description of the access to trading and execution systems provided with the purchase of access to the co-location local area networks. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location[4] services offered by the Exchange to update the description of the access to trading and execution services and connectivity to data provided to Users[5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, local area networks available in the data center.

To implement the changes, the Exchange proposes to amend paragraph one of General Note 4, which describes the access to trading and execution systems which a User receives when it purchases access to the LCN or IP network.[6]

The Exchange will announce the implementation date through a customer notice.

As set forth in the first paragraph of General Note 4, when a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the Exchange and the SRO Affiliates (together, the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO.[7] The Exchange proposes to revise such paragraph to reflect that a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of Global OTC (''Global OTC System''), subject to authorization by Global OTC.

In order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User any applicable fees charged to its subscribers by Global OTC. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.

The Exchange provides Users access to the Global OTC System and the Exchange Systems (''Access'') as a convenience to Users. Use of Access is completely voluntary. The Exchange is not aware of any impediment to third

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'' and, together with NYSE, NYSE American and NYSE Chicago, Inc., the ''Affiliate SROs'').*See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172) (notice of filing and immediate effectiveness of proposed rule change amending the Exchange's Fee Schedules related to co-location services to increase LCN and IP network fees and add a description of access to trading and execution services and connectivity to Included Data Products).

[7] *See id.*

parties offering Access. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Global OTC

Global OTC is an affiliate of the Exchange, which has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8]

Unlike the NYSE Exchanges, Global OTC is not a national securities exchange registered with the Securities and Exchange Commission (''Commission'') under Section 6 of the Act.[9] Rather, Global OTC is an alternative trading system (''ATS'') [10] operated by a broker-dealer, a member of the Financial Industry Regulatory Authority. It facilitates transactions in over-the-counter (''OTC'') equity securities, providing publicly displayed, firm, auto-executable prices in the OTC securities marketplace. There is no overlap in the securities traded on the NYSE Exchanges and Global OTC: Members trade National Market System (''NMS'') securities on the NYSE Exchanges,[11] but Global OTC subscribers cannot trade NMS securities on Global OTC.

The Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers, including two ATSs.[12] Of those, the Exchange believes the OTC Markets ATS is the most comparable to Global OTC.[13] Both are inter-dealer quotation systems for OTC securities.[14] Global OTC and the OTC Markets' ATS are not fungible, however. The OTC Markets' ATS is a trade messaging system that displays market makers quotes and does not offer automatic executions. While Global OTC provides a limit order book, displays participants' orders, and executes orders pursuant to price/time priority, OTC Markets' ATS displays market makers' quotes by price priority, not time priority. In sum, OTC Markets' ATS is a market maker intermediary, whereas Global OTC is a trading platform.

The Proposed Amendments

To implement the change, the Exchange proposes to revise the first paragraph of General Note 4 as follows:

- Amend the first sentence to state that when a User purchases access to the LCN or IP network, it receives the ability to access the Global OTC System as well as the Exchange Systems, subject to authorization by Global OTC, the Exchange or Affiliate Exchange, as applicable;
- Amend the third sentence to note that a User can change the access to the Global OTC System that it receives at any time, subject to authorization by Global OTC; and
- Add a new fifth sentence stating that ''Global OTC offers access to the Global OTC System to its subscribers, such that a User does not have to purchase access to the LCN or IP network to obtain access to the Global OTC System.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow Users to connect to the Global OTC System, thereby increasing Users' ability to tailor their data center operations to the

[8] *See* Securities Exchange Act Release No. 79672 (December 22, 2016), 81 FR 96080 (December 29, 2016) (SR–NYSEMKT–2016–63), fn. 21. Global OTC is operated by Archipelago Trading Services, Inc., which is a broker-dealer subsidiary of NYSE Group, Inc. (''NYSE Group''). NYSE Group is also the parent company of the Exchange.

[9] 15 U.S.C. 78f. Global OTC is not required to register as a national securities exchange because it operates under an exemption from the requirement to register as an exchange. *See* 17 CFR 240.3a1–1(a) and 17 CFR 240.300 through 304.

[10] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[11] *See* 17 CFR 242.600.

[12] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees). Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

[13] The OTC Markets' ATS is OTC Link. Global OTC is substantially smaller than OTC Markets' ATS: Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' ATS market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[14] The third inter-dealer quotation system is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[16] *See* 78 FR 50471, *supra* note 5, at 50471. NYSE, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–31, SR–NYSEAmer–2019–21, and SR–NYSENAT–2019–13.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

requirements of their business operations by allowing them to select the form and latency of access that best suits their needs. Global OTC provides publicly displayed, firm, auto-executable prices in the OTC securities marketplace, and the Exchange believes that allowing Users to connect to the Global OTC System would promote price discovery and transparency in the OTC market, benefiting participants in such market. At the same time, Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable.

The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they would make the description of Access more accessible and transparent by including Global OTC, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network, avoiding any potential investor confusion. The proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network. The proposed rule change would also make clear that Access to each of the Exchange Systems and the Global OTC System is provided on the same terms. All Users that voluntarily select to access the LCN or IP network receive Access to the Exchange Systems and the Global OTC System, and are not subject to a charge for such Access above and beyond the fee paid for the relevant LCN or IP network access.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act for multiple reasons.

The proposed rule change is reasonable and equitable because, as stated above, it would also make clear that Access to each of the Exchange Systems and Global OTC System is provided on the same terms. The Exchange further believes that the Access to the Global OTC System described herein is equitably allocated and not unfairly discriminatory because all Users that voluntarily select to access the LCN or IP network receive the same Access, and are not subject to a charge for Access to Global OTC above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable. In addition to the service being completely voluntary, it is available to all Users on an equal basis. Users that opted to Access the Global OTC System would not receive access that is not available to all Users.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users that purchase access to the LCN or IP network with Access to the Global

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(8).

OTC System does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering Access to the Global OTC System, the Exchange gives each User additional options for addressing its access needs, responding to User demand for access options. The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor. Users that opt to Access the Global OTC System would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. [23]

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would allow Users to have access to the Global OTC System during the operative delay period and would provide Users with options for connectivity to trading and execution services and the availability of products and services. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2019–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2019–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2019–40 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11558 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33495; 812–14791]

Columbia Funds Series Trust, et al.

May 30, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers. The requested order would supersede a prior order.[1]

Applicants: Columbia Funds Series Trust, Columbia Funds Series Trust I, Columbia Funds Series Trust II, Columbia Funds Variable Insurance Trust, Columbia Funds Variable Series Trust II, Columbia ETF Trust, Columbia ETF Trust I, and Columbia ETF Trust II (each, a ''Trust'' and collectively, the ''Trusts''), each a Delaware statutory trust or a Massachusetts business trust registered under the Act as an open-end management investment company with multiple series (each a ''Series''), and Columbia Management Investment Advisers, LLC (the ''Adviser''), a Minnesota limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on June 28, 2017 and amended on December 11, 2017, September 28, 2018, March 7, 2019, and May 17, 2019.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 25, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Ryan C. Larrenaga, Esq., Columbia Management Investment Advisers, LLC, 225 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Trace W. Rakestraw, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Adviser serves as the investment adviser to each Series, pursuant to an investment management agreement with the applicable Trust (''Investment Management Agreement'').[2] Under the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the board of trustees of the applicable Trust (''Board''), provides continuous investment management of the assets of

[1] AXP Market Advantage Series, Inc., *et al.,* Investment Company Act Release Nos. 25619 (June 19, 2002) (notice) and 25664 (July 16, 2002) (order).

[2] Applicants request relief with respect to the named Applicants, as well as to any future Series, and any other existing or future registered open-end management investment company or series thereof that, in each case, (i) is advised by the Adviser or any entity controlling, controlled by, or under common control with, the Adviser or its successors (each, also an ''Adviser''), (ii) uses the multi-manager structure described in the application, and (iii) complies with the terms and conditions set forth in the application (each, a ''Subadvised Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Series may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the applicable Trust (each, a ''Feeder Fund'') may invest substantially all of their assets in a Subadvised Series (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

each Subadvised Series. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisers.[3] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Series. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Series and will oversee, monitor and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to the approval of the Board, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[4] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure'').[5]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11584 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[3] As used herein, a ''Sub-Adviser'' for a Subadvised Series is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Subadvised Series, or (2) a sister company of the Adviser for that Subadvised Series that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Series, any Feeder Fund invested in a Master Fund, any Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Series (''Non-Affiliated Sub-Advisers'').

[4] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

[5] For any Subadvised Series that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85955; File No. SR–NYSEArca–2019–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Investments of Aware Ultra-Short Duration Enhanced Income ETF, a Series of Tidal ETF Trust

May 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 15, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes regarding investments of Aware Ultra-Short Duration Enhanced Income ETF (the ''Fund''), a series of Tidal ETF Trust (the ''Trust''). Shares of the Fund currently are listed and traded on the Exchange under NYSE Arca Rule 8.600–E (''Managed Fund Shares'').The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain changes, described below under ''Application of Generic Listing Requirements,'' regarding investments of the Fund. The shares (''Shares'') of the Fund commenced trading on the Exchange on January 29, 2019 pursuant to the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600–E [4] (''Managed Fund Shares'').[5]

[4] The Fund's investments currently comply with the generic requirements set forth in Commentary .01 to Rule 8.600–E.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its

Continued

Toroso Investments, LLC (the ''Adviser'') is the investment adviser for the Fund. Aware Asset Management, Inc. (the ''Subadviser'') is the subadviser to the Fund. U.S. Bank National Association serves as the custodian (''Custodian'') for the Fund. Tidal ETF Services LLC serves as administrator for the Fund. U.S. Bancorp Fund Services, LLC serves as sub-administrator, fund accountant and transfer agent (''Transfer Agent'') for the Fund.[6] Foreside Fund Services, LLC serves as the distributor (the ''Distributor'') for the Fund's Shares.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600–E is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .06 in connection with the establishment and maintenance of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and the Subadviser are not registered as broker-dealers and are not affiliated with a broker-dealer. In the event (a) the Adviser or Subadviser becomes registered as a broker-dealer or affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or is affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Aware Ultra-Short Duration Enhanced Income ETF

According to the Registration Statement, the investment objective of the Fund is to seek to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity.

The Fund seeks to achieve its investment objective primarily by investing in ''Fixed Income Securities'' (as described below).

The Fund's may invest in the following fixed income instruments (''Fixed Income Securities'') issued by both U.S. and non-U.S. government and private sector issuers:

- U.S. government securities;
- Agency and non-agency asset-backed securities (''ABS'') and mortgage-backed securities (''MBS'') and collateralized mortgage obligations (''CMOs'');[7]
- floating or variable rate securities;
- collateralized bond obligations (''CBOs''), collateralized loan obligations (''CLOs'') and other collateralized debt obligations (''CDOs'' and, together with CBOs and CLOs, ''CDOs/CBOs/CLOs'');[8]
- corporate debt securities;
- municipal securities;
- floating or variable rate securities;
- inflation-indexed bonds;
- inflation-indexed securities issued by the U.S. Treasury, commonly known as ''TIPS'';
- commercial paper (in addition to commercial paper that are cash equivalents);[9]
- convertible securities; and
- structured notes.

The Fund may hold cash and cash equivalents.[10]

The Fund may enter into dollar rolls and short sales of Fixed Income Securities. The Fund may also purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions.

The Fund may invest in private placements and Rule 144A securities.

The Fund may hold the following U.S. and non-U.S. equity securities: Common stocks, preferred stocks, rights, warrants, exchange-traded notes (''ETNs''),[11] exchange-traded funds (''ETFs''),[12] and securities of other investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

The Fund may hold the following U.S. and non-U.S. exchange-listed and over-the-counter (''OTC'') derivative instruments: OTC foreign currency forwards; U.S. and non-U.S. exchange-listed futures and options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities or related indices; and OTC options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities or related indices.[13]

investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On December 21, 2018, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–227298 and 811–23377) (''Registration Statement''). The Trust will file an amendment to the Registration Statement as necessary to conform to the representations in this filing. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 33433 (March 29, 2019) (File No. 812–14939).

[7] For purposes of this filing, non-agency ABS, non-agency MBS, and non-agency CMOs are referred to collectively herein as ''Private ABS/MBS.''

[8] For purposes of this filing, CDOs, CBOs and CLOs are excluded from the term Private ABS/MBS. CLOs are securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. CBOs are securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers. CDOs/CBOs/CLOs are distinguishable from ABS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer and other loans made by non-bank lenders, including student loans. As discussed below, for purposes of this proposed rule change, CDOs/CBOs/CLOs will not be subject to the 20% limit set forth in Commentary .01(b)(5) to Rule 8.600–E.

[9] *See* note 10, *infra*.

[10] For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600–E.

[11] ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities).

[12] For purposes of this filing, the term ''ETFs'' are Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[13] Derivative instruments may be used for ''hedging,'' which means that they may be used when the Sub-Adviser seeks to protect the Fund's investments from a decline in value resulting from changes to interest rates, market prices, currency fluctuations, or other market factors. Derivative instruments may also be used for other purposes, including to seek to increase liquidity, provide efficient portfolio management, broaden investment opportunities (including taking short or negative positions), implement a tax or cash management strategy, gain exposure to a particular security or segment of the market, modify the effective

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Investment Restrictions

Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

The Fund may invest up to 10% of its total assets in CDOs/CBOs/CLOs.[14]

Investments in non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund.

Creation and Redemption of Shares

According to the Registration Statement, the Trust issues and redeems Shares only in Creation Units of 25,000 Shares on a continuous basis at their NAV per Share next determined after receipt of an order, on any ''Business Day'', in proper form pursuant to the terms of the Authorized Participant Agreement (''Participant Agreement''). The NAV of Shares is calculated each Business Day as of the scheduled close of regular trading on the NYSE, generally 4:00 p.m., Eastern Time. A ''Business Day'' is any day on which the NYSE is open for business. The size of a Creation Unit is subject to change.

The consideration for purchase of a Creation Unit of the Fund generally consists of the in-kind deposit of a designated portfolio of securities (the ''Deposit Securities'') per each Creation Unit, constituting a substantial replication of the securities included in the Fund's portfolio and the Cash Component (defined below), computed as described below. Notwithstanding the foregoing, the Trust reserves the right to permit or require the substitution of a ''cash in lieu'' amount (''Deposit Cash'') to be added to the Cash Component to replace any Deposit Security.

Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' is an amount equal to the difference between the NAV of Shares (per Creation Unit) and the value of the Deposit Securities or Deposit Cash, as applicable.

The Fund, through the National Securities Clearing Corporation (''NSCC''), makes available on each Business Day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund.

The Trust reserves the right to permit or require the substitution of Deposit Cash to replace any Deposit Security, which shall be added to the Cash Component.

To be eligible to place orders with the Transfer Agent to purchase a Creation Unit of the Fund, an entity must be (i) a ''Participating Party'', *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the ''Clearing Process''), a clearing agency that is registered with the Commission; or (ii) a Depository Trust Company (''DTC'') Participant. In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute a Participant Agreement.

The order cut-off time for the Fund for orders to purchase Creation Units is expected to be 2:00 p.m. Eastern Time, which time may be modified by the Fund from time-to-time by amendment to the Participant Agreement and/or applicable order form.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a Business Day.

With respect to the Fund, the Custodian, through the NSCC, makes available prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each Business Day, the list of the names and share quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit are paid either in-kind or in cash, or combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities—as announced by the Custodian on the Business Day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee, as applicable. In the event that the Fund Securities have a value greater than the NAV of Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.[15]

Orders to redeem Creation Units must be submitted in proper form to the Transfer Agent prior to 4:00 p.m. Eastern Time.

Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the Fund's investment objectives and policies.

To limit the potential risk associated with such transactions, the Fund may enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Fund's Board of Trustees (the ''Board''). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

Impact on Arbitrage Mechanism

The Adviser and the Subadviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. The Adviser and the Subadviser understand that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser and the Subadviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their NAV, which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

duration of the Fund's portfolio investments and/or enhance total return.

[14] As noted above, CDOs/CBOs/CLOs would be excluded from the 20% limit on Private ABS/MBS.

[15] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the changes described below would result in the portfolio for the Fund not meeting all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1), Commentary .01(b)(1), Commentary .01(b)(4) and Commentary .01(b)(5).[16]

Specifically, the Fund:

• Will not comply with the requirement in Commentary .01(b)(1) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs that, in the aggregate, account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would not be subject to a requirement for a minimum original principal amount outstanding.

• will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.,* Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund. CDOs/CBOs/CLOs will not be subject to the 20% limit set forth in Commentary .01(b)(5); however, the Fund's investments in CDOs/CBOs/CLOs will be limited to10% of the Fund's total assets.

• will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4) in respect of its investments in Private ABS/MBS.[17] Instead, the Exchange proposes that all Fixed Income Securities, excluding Private ABS/MBS, will meet the criteria in Commentary .01(b)(4). Private ABS/MBS will be limited to 20% of the Fund's total assets and will not be required to comply with the criteria in Commentary .01(b)(4)(a) through (e) to NYSE Arca Rule 8.600–E.

• will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E in connection with the Fund's investments in non-exchange traded investment company securities.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(1) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs, that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would not be subject to a requirement for a minimum original principal amount outstanding. At least 50% of the fixed income weight of the Fund's portfolio, excluding Private ABS/MBS and CDOs/CBOs/CLOs, would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. By excluding Private ABS/MBS and CDOs/CBOs/CLOs from this requirement, the Fund will be able to better diversify its holdings in such securities, and would be able to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs that have characteristics consistent with the Fund's investment objective to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity. These characteristics may include, for example, Private ABS/MBS and CDOs/CBOs/CLOs with investment grade credit rating or liquidity comparable to fixed income securities with a much greater amount outstanding.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (*i.e.,* Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Fund's Board, and the Adviser does not expect that investments in Private ABS/MBS of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.[18] The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately-issued ABS and MBS (*i.e.,* Private ABS/MBS).[19] Thus, it is appropriate to

[16] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

[17] Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[18] Rule 22e–4(b) under the 1940 Act requires, among other things, that a fund ''adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk.'' The rule is ''designed to promote effective liquidity risk management throughout the open-end investment company industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders.'' *See* Release Nos. 33–10233; IC–32315; File No. S7–16–15 (October 13, 2016).

[19] *See, e.g.,* Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (permitting the

expand the limit on the Fund's investments in Private ABS/MBS set forth in Commentary .01(b)(5) of the generic listing standards.

As noted above, the Fund will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4).[20] The Exchange proposes that the Private ABS/MBS, will not be required to comply with the criteria in Commentary .01(b)(4)(a) through (e) to NYSE Arca Rule 8.600–E. In this regard, the Exchange proposes to provide that the Fund will not invest more than 20% of the Fund's total assets in Private ABS/MBS. CDOs/CBOs/CLOs, however, will be subject to the criteria in Commentary .01(b)(4)(a) through (e)[21] and the Fund will not invest more than 10% of the Fund's total assets in CDOs/CBOs/CLOs.[22] The Exchange believes that this 10% limitation will help the Fund maintain portfolio diversification and will reduce manipulation risk. In addition, the Adviser does not expect that investments in CDOs/CBOs/CLOs of up to 10% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.[23]

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).[24] In addition, the Commission has approved proposed rule changes permitting investments by an issue of Managed Fund Shares to exclude non-U.S. Government, non-agency, non-GSE and other privately-issued ABS and MBS (as described in such proposed rule changes) from the provisions of rules comparable to Commentary .01(b)(4).[25]

In addition, the Fund's investment in Private ABS/MBS and CDOs/CBOs/CLOs will be subject to the Fund's liquidity risk management program as approved by the Fund's Board.[26] The liquidity procedures generally include public disclosure by the Fund of its liquidity and redemption practices. The Fund's holdings in Private ABS/MBS and CDOs/CBOs/CLOs would be encompassed within the Fund's liquidity risk management program.

The Fund may invest in shares of investment company securities (other than ETFs), which are equity securities. Therefore, to the extent the Fund invests in shares of other non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) with respect to its equity securities holdings.[27]

Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR–NYSEArca–2015–111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–017) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR–NYSEArca–2014–134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MSB and other ABS, without any limit on the type of such MBS and ABS). See also Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF under NYSE Arca Rule 8.600–E).

[20] Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. In the First Prior Order, the Commission approved an exception from Commentary .01(b)(4) to provide that fixed income securities that do not meet any of the criteria in Commentary .01(b)(4) will not exceed 10% of the total assets of the Fund.

[21] As noted above, CDOs/CBOs/CLOs would be excluded from the 20% limit on Private ABS/MBS.

[22] For purposes of this filing, CDOs/CBOs/CLOs are not deemed to be ABS for purposes of the restriction on the Fund's holdings of Private ABS/MBS. *See* note 8, *supra.*

[23] The Exchange notes that the Commission has approved a proposed rule change permitting an issue of Managed Fund Shares to hold up to 30% of the weight of the fixed income securities portion of the fund's portfolio to consist of non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities. *See* Securities Exchange Act Release No. 84826 (December 14, 2018), 83 FR 65386 (December 20, 2018) (SR–NYSEArca–2018–25) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Continued Listing and Trading of Shares of the Natixis Loomis Sayles Short Duration Income ETF).

[24] *See, e.g.,* Exchange Act Release Nos. 67894 (September 20, 2012), 77 FR 59227 (September 26, 2012) (SR–BATS–2012–033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR–NYSEArca–2013–71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

[25] *See* Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the Western Asset Total Return ETF); *See also,* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the Western Asset Total Return ETF); 85022 (January 31, 2019), 25 FR 2265 (February 6, 2019) (SR–NASDAQ–2018–080) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3, To List and Trade Shares of the BrandywineGLOBAL-Global Total Return ETF).

[26] Rule 22e–4(b) under the 1940 Act requires, among other things, that a fund ''adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk.'' The rule is ''designed to promote effective liquidity risk management throughout the open-end investment company industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders.'' *See* Release Nos. 33–10233; IC–32315; File No. S7–16–15 (October 13, 2016).

[27] Commentary .01(a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)) and Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)). Commentary .01(a)(1) to Rule 8.600–E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed

Continued

However, it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E. Investments in other non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder.[28] Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E)).[29] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act, and application of Commentary .01(a)(1)(A) through (D) would not serve the purposes served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies where such funds were permitted to invest in the shares of other registered investment companies that are not ETFs or money market funds.[30] Thus, it is appropriate to permit the Fund to invest up to 20% of its total assets in other non-exchange-traded open-end management investment company securities.

The Adviser and Subadviser represent that the proposed exceptions from the requirements of Commentary .01 to Rule 8.600–E described above are consistent with the Fund's investment objective, and will further assist the Adviser and Subadviser to achieve such investment objective. Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600–E. The Exchange notes that, other than Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.awareetf.com*) will include the prospectus for the Fund that may be

on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

[28] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600–E).

[29] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units)(''2008 Approval Order''). *See also* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Rule 8.600–E To Adopt Generic Listing Standards for Managed Fund Shares). *See also* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf*.

[30] *See, e.g.,* Securities Exchange Act Release Nos. 79053 (October 5, 2016), 81 FR 70468 (October 12, 2016) (SR–BatsBZX–2016–35) (permitting the JPMorgan Global Bond Opportunities ETF to invest in ''investment company securities that are not ETFs''); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (permitting the U.S. Fixed Income Balanced Risk ETF to invest in ''exchange traded and non-exchange traded investment companies (including investment companies advised by the Adviser or its affiliates) that invest in such Fixed Income Securities''); 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR–NYSEArca–2018–15), (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF under NYSE Arca Rule 8.600–E).

downloaded. The Fund's website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[31] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the Business Day.[32]

On a daily basis, the Fund discloses the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding securities and other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and Forms N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Price information relating to OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. For exchange-traded common stocks, preferred stocks, rights, warrants, ETNs and ETFs, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Intraday and other price information for the fixed income securities in which the Fund invests will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, privately-issued securities, MBS and ABS, to the extent transactions in such securities are reported to TRACE.[33] Money market funds are typically priced once each Business Day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, repurchase agreements, reverse repurchase agreements and cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation are available via the Options Price Reporting Authority. In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5) as described above under ''Application of Generic Listing Requirements,'' the Shares of the Fund will conform to the initial and

[31] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[32] Under accounting procedures followed by the Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[33] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange has obtained a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA''). The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to TRACE.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)–E.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser and Subadviser are not registered as broker-dealers or affiliated with a broker-dealer. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. In the aggregate, at least 90% of the weight of the Fund's holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA. For purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

As discussed above, the Fund will not comply with the requirement in

Commentary .01(b)(1) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs, that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would not be subject to a requirement for a minimum original principal amount outstanding. The Exchange believes this alternative is appropriate because at least 50% of the fixed income weight of the Fund's portfolio, excluding Private ABS/MBS and CDOs/CBOs/CLOs, would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. In addition, by excluding Private ABS/MBS and CDOs/CBOs/CLOs from this requirement, the Fund will be able to better diversify its holdings in such securities, and would be able to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs that have characteristics consistent with the Fund's investment objective to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity. These characteristics may include, for example, Private ABS/MBS and CDOs/CBOs/CLOs with investment grade credit rating or liquidity comparable to fixed income securities with a much greater amount outstanding.

As noted above, the Fund may invest in shares of non-exchange-traded investment company securities, which are equity securities. Therefore, to the extent the Fund invests in shares of non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) with respect to its equity securities holdings.[34] The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E. Investments in non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Fund's Board, and the Adviser does not expect that investments in Private ABS/MBS of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.[35] The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately-issued ABS and MBS (*i.e.,* Private ABS/MBS).[36] Thus, it is appropriate to expand the limit on the Fund's investments in Private ABS/MBS set forth in Commentary .01(b)(5) of the generic listing standards.

As noted above, the Fund will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4).[37] The Exchange proposes that the Private ABS/MBS, will not be required to comply with the criteria in Commentary .01(b)(4)(a) through (e) to NYSE Arca Rule 8.600–E. In this regard, the Exchange proposes to provide that the Fund will not invest more than 20% of the Fund's total assets in Private ABS/MBS. CDOs/CBOs/CLOs, however, will be subject to the criteria in Commentary .01(b)(4)(a) through (e)[38] and the Fund will not invest more than 10% of the Fund's total assets in CDOs/CBOs/CLOs.[39] The Exchange believes that this 10% limitation will help the Fund maintain portfolio diversification and will reduce manipulation risk. In addition, the Adviser does not expect that investments in CDOs/CBOs/CLOs of up to 10% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

In addition, the Fund's investment in Private ABS/MBS and CDOs/CBOs/CLOs will be subject to the Fund's liquidity risk management program as approved by the Fund's Board.[40] The liquidity procedures generally include public disclosure by the Fund of its liquidity and redemption practices. The Fund's holdings in Private ABS/MBS and CDOs/CBOs/CLOs would be encompassed within the Fund's liquidity risk management program.

The Adviser and Subadviser represent that the proposed exceptions from the requirements of Commentary .01 to Rule 8.600–E described above are consistent with the Fund's investment objective, and will further assist the Adviser and Subadviser to achieve such investment objective. Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would

[34] *See* note 27, *supra.*

[35] *See* note 18, *supra.*

[36] *See* note 19, *supra.*

[37] *See* note 17, *supra.*

[38] As noted above, CDOs/CBOs/CLOs would be excluded from the 20% limit on Private ABS/MBS.

[39] For purposes of this filing, CDOs/CBOs/CLOs are not deemed to be ABS for purposes of the restriction on the Fund's holdings of Private ABS/MBS. *See* note 8, *supra.*

[40] *See* note 18, *supra.*

not meet the requirements of Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600–E. The Exchange notes that, other than Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the continued listing and trading Shares of the Fund, and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–38 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–11556 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85953; File No. SR–Phlx–2019–22]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow $1 or Greater Strike Price Intervals for Options on QQQ and IWM

May 29, 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 May 17, 2019, Nasdaq PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow $1 or greater strike price intervals for options on certain Exchange-Traded Fund (''ETF'') Shares, as described below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's rules to allow $1 or greater strike price intervals for options listed on the PowerShares QQQ Trust (''QQQ'') and the iShares Russell 2000 Index Fund (''IWM''), consistent with recent changes proposed by Cboe Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Inc. (''CBOE'') and approved by the Commission.[5]

Currently, Commentary .05(a)(iv)(C) to Rule 1012 allows for the interval between strike prices of series of options on SPY, IVV, and DIA to be $1 or greater where the strike price is greater than $200. QQQ and IWM options, however, currently trade on the Exchange with $1 intervals up to a strike price of $200 pursuant to Commentary .05(a)(iv)(A) to Rule 1012. Above $200, these options classes trade with significantly wider $5 strike price intervals. The Exchange now proposes to modify Commentary .05(a)(iv)(C) to Rule 1012 to allow $1 strike price intervals where the strike price is above $200 for QQQ and IWM options, in effect matching the strike setting regime for these products below $200 and also for options on SPY, IVV, and DIA. The Exchange believes that the proposed rule change would make QQQ and IWM options easier for investors and traders to use, and more tailored to their investment needs.

QQQ and IWM are designed to provide investors different ways to efficiently gain exposure to the equity markets and execute risk management, hedging, asset allocation and income generation strategies. QQQ is a unit investment trust designed to closely track the price and performance of the Nasdaq-100 Index (''NDX''), which represents the largest and most active non-financial domestic and international issues listed on The Nasdaq Stock Market based on market capitalization. Likewise, IWM is an index ETF designed to closely track the price and performance of the Russell 2000 Index (''RUT''), which represents the small capitalization sector of the U.S. equity market. In general, QQQ and IWM options provide investors with the benefit of trading broader markets in a manageably sized contract.

The value of QQQ is designed to approximate 1/40 the value of the underlying NDX. For example, if the NDX price level is 1400, QQQ strike prices generally would be expected to be priced around $35. The value of IWM is designed to approximate 1/10 the value of the underlying RUT. In the past year, NDX has climbed above a price level of 7500 and RUT climbed to a price level of approximately 1700 (both prior to the December 2018 market-wide decline). The prices for QQQ and IWM options have correspondingly increased within the same time period.[6] As the value of the underlying ETF (and the index the ETF tracks) and resulting strike prices for each option appreciates, investor and member demands to list additional strike prices ($1 increments) in QQQ and IWM options above $200 continue to increase. QQQ is among the most actively traded ETFs on the market. It is widely quoted as an indicator of technology stock price and investor confidence in the technology and telecommunication market spaces, a significant indicator of overall economic health. Similarly, IWM is among the most actively traded ETFs on the market and provides investors with an investment tool to gain exposure to small U.S. public companies. Industry-wide trade volume in QQQ more than doubled from 2017 to 2018. QQQ options and IWM options have grown to become two of the largest options contracts in terms of trading volume. Investors use these products to diversify their portfolios and benefit from market trends.

Accordingly, the Exchange believes that offering a wider base of QQQ and IWM options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed $1 strike price intervals above $200 in QQQ and IWM options significantly constricts investors' hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in QQQ and IWM, investors would have more efficient hedging and trading opportunities due to the lower $1 intervals. The proposed $1 intervals above the $200 strike price will result in having at-the-money series based upon the underlying ETFs moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that $1 intervals already exist below the $200 price point and that both QQQ and IWM have consistently inclined in price toward the $200 level, the Exchange believes that continuing to maintain the current $200 level (above which intervals increase 500% to $5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with QQQ and IWM options far outweighs any potential negative impact of allowing QQQ and IWM options to trade in more finely tailored intervals above the $200 price point.

The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing values in the underlying indices, and allow investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETFs. Under the current rule, where the next higher available series would be $5 away above a $200 strike price, the ability to roll such positions is effectively negated. Accordingly, to move a position from a $200 strike to a $205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. As discussed above, NDX and RUT have experienced continued, steady growth. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his/her open options position from a $200 to a $201 strike price, which is only a 0.5% move for the underlying. The Exchange believes that the proposed rule change will benefit investors by providing them the flexibility to more closely tailor their investment and hedging decisions using QQQ and IWM options.

By allowing series of QQQ and IWM options to be listed in $1 intervals between strike prices over $200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes that it and the Options Price Reporting Authority (''OPRA'') have the necessary system capacity to handle any potential additional traffic associated with this rule change. The Exchange also believes that members will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe this expansion will cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change to

[5] *See* Securities Exchange Act Release No. 85754 (April 30, 2019), 84 FR 19823 (May 6, 2019) (SR–CBOE–2019–015).

[6] For example, by the end of August 2018, QQQ was trading at more than $185 per share and IWM was trading at more than $170 per share.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Commentary .05(a)(iv)(C) to Rule 1012 will allow investors to more easily and effectively use QQQ and IWM options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in QQQ and IWM options where the strike price is greater than $200, and ensure that investors in both options are not at a disadvantage simply because of the strike price.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The rule change proposal allows the Exchange to respond to customer demand to allow QQQ and IWM options to trade in $1 intervals above a $200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality.

As noted above, QQQ and IWM options currently trade in wider $5 intervals above a $200 strike price, whereas the same products at or below a $200 strike price trade in $1 intervals. This creates a situation where contracts on the same options class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the $200 strike price, above which options intervals increase by 500%. This proposal remedies the situation by allowing QQQ and IWM options to trade in $1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Moreover, the proposal is consistent with changes adopted by CBOE and approved by the Commission.[10]

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. As discussed above, the Exchange further believes that its members will not have a capacity issue as a result of this proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive response to a recent CBOE filing approved by the Commission.[11] The Exchange believes that the proposed rule change is essential to ensure fair competition between markets, and will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of this requirement will ensure fair competition among the exchanges by allowing the Exchange to set the interval between strike prices of series of options on ETF shares of QQQ and IWM in a manner consistent with another exchange. Further, the Exchange states that because the proposed rule change is based on the rules of another exchange,[16] it does not introduce any new or novel regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–22 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–Phlx–2019–22. 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

[9] 15 U.S.C. 78f(b)(1).

[10] *See supra* note 5.

[11] *See supra* note 5.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 5.

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–Phlx–2019–22 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–11543 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85950; File No. SR–BX–2019–015]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow $1 or Greater Strike Price Intervals for Options on QQQ and IWM

May 29, 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 May 17, 2019, Nasdaq BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal [sic] to allow $1 or greater strike price intervals for options on certain Exchange-Traded Fund (''ETF'') Shares, as described below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's rules to allow $1 or greater strike price intervals for options listed on the PowerShares QQQ Trust (''QQQ'') and the iShares Russell 2000 Index Fund (''IWM''), consistent with recent changes proposed by Cboe Exchange, Inc. (''CBOE'') and approved by the Commission.[5]

Currently, Chapter IV, Supplementary Material .01(c) to Section 6, allows for the interval between strike prices of series of options on SPY, IVV, and DIA to be $1 or greater where the strike price is greater than $200. QQQ and IWM options, however, currently trade on the Exchange with $1 intervals up to a strike price of $200 pursuant to Supplementary Material .01(b) to Section 6. Above $200, these options classes trade with significantly wider $5 strike price intervals. The Exchange now proposes to modify Supplementary Material .01(c) to Section 6 to allow $1 strike price intervals where the strike price is above $200 for QQQ and IWM options, in effect matching the strike setting regime for these products below $200 and also for options on SPY, IVV, and DIA. The Exchange believes that the proposed rule change would make QQQ and IWM options easier for investors and traders to use, and more tailored to their investment needs.

QQQ and IWM are designed to provide investors different ways to efficiently gain exposure to the equity markets and execute risk management, hedging, asset allocation and income generation strategies. QQQ is a unit investment trust designed to closely track the price and performance of the Nasdaq-100 Index (''NDX''), which represents the largest and most active non-financial domestic and international issues listed on The Nasdaq Stock Market based on market capitalization. Likewise, IWM is an index ETF designed to closely track the price and performance of the Russell 2000 Index (''RUT''), which represents the small capitalization sector of the U.S. equity market. In general, QQQ and IWM options provide investors with the benefit of trading broader markets in a manageably sized contract.

The value of QQQ is designed to approximate 1/40 the value of the underlying NDX. For example, if the NDX price level is 1400, QQQ strike prices generally would be expected to be priced around $35. The value of IWM is designed to approximate 1/10 the value of the underlying RUT. In the past year, NDX has climbed above a price level of 7500 and RUT climbed to a price level of approximately 1700 (both prior to the December 2018 market-wide decline). The prices for QQQ and IWM options have correspondingly increased within the same time period.[6] As the value of the underlying ETF (and the index the ETF tracks) and resulting strike prices for each option appreciates, investor and member demands to list additional strike prices ($1 increments) in QQQ and IWM options above $200 continue to increase. QQQ is among the most actively traded ETFs on the market. It is widely quoted as an indicator of technology stock price and investor confidence in the technology and telecommunication market spaces, a significant indicator of overall economic health. Similarly, IWM is among the most actively traded ETFs on the market

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 85754 (April 30, 2019), 84 FR 19823 (May 6, 2019) (SR–CBOE–2019–015).

[6] For example, by the end of August 2018, QQQ was trading at more than $185 per share and IWM was trading at more than $170 per share.

and provides investors with an investment tool to gain exposure to small U.S. public companies. Industry-wide trade volume in QQQ more than doubled from 2017 to 2018. QQQ options and IWM options have grown to become two of the largest options contracts in terms of trading volume. Investors use these products to diversify their portfolios and benefit from market trends.

Accordingly, the Exchange believes that offering a wider base of QQQ and IWM options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed $1 strike price intervals above $200 in QQQ and IWM options significantly constricts investors' hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in QQQ and IWM, investors would have more efficient hedging and trading opportunities due to the lower $1 intervals. The proposed $1 intervals above the $200 strike price will result in having at-the-money series based upon the underlying ETFs moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that $1 intervals already exist below the $200 price point and that both QQQ and IWM have consistently inclined in price toward the $200 level, the Exchange believes that continuing to maintain the current $200 level (above which intervals increase 500% to $5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with QQQ and IWM options far outweighs any potential negative impact of allowing QQQ and IWM options to trade in more finely tailored intervals above the $200 price point.

The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing values in the underlying indices, and allow investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETFs. Under the current rule, where the next higher available series would be $5 away above a $200 strike price, the ability to roll such positions is effectively negated. Accordingly, to move a position from a $200 strike to a $205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. As discussed above, NDX and RUT have experienced continued, steady growth. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his/her open options position from a $200 to a $201 strike price, which is only a 0.5% move for the underlying. The Exchange believes that the proposed rule change will benefit investors by providing them the flexibility to more closely tailor their investment and hedging decisions using QQQ and IWM options.

By allowing series of QQQ and IWM options to be listed in $1 intervals between strike prices over $200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes that it and the Options Price Reporting Authority (''OPRA'') have the necessary system capacity to handle any potential additional traffic associated with this rule change. The Exchange also believes that members will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe this expansion will cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change to Chapter IV, Supplementary Material .01(c) to Section 6 will allow investors to more easily and effectively use QQQ and IWM options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in QQQ and IWM options where the strike price is greater than $200, and ensure that investors in both options are not at a disadvantage simply because of the strike price.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The rule change proposal allows the Exchange to respond to customer demand to allow QQQ and IWM options to trade in $1 intervals above a $200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality.

As noted above, QQQ and IWM options currently trade in wider $5 intervals above a $200 strike price, whereas the same products at or below a $200 strike price trade in $1 intervals. This creates a situation where contracts on the same options class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the $200 strike price, above which options intervals increase by 500%. This proposal remedies the situation by allowing QQQ and IWM options to trade in $1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Moreover, the proposal is consistent with changes adopted by CBOE and approved by the Commission.[10]

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. As discussed above, the Exchange further believes that its members will not have a capacity issue as a result of this proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive response to a recent CBOE filing approved by the Commission.[11] The Exchange believes that the proposed rule change is essential to ensure fair competition between markets, and will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles,

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1).

[10] *See supra* note 5.

[11] *See supra* note 5.

to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of this requirement will ensure fair competition among the exchanges by allowing the Exchange to set the interval between strike prices of series of options on ETF shares of QQQ and IWM in a manner consistent with another exchange. Further, the Exchange states that because the proposed rule change is based on the rules of another exchange,[16] it does not introduce any new or novel regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2019–015 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–BX–2019–015. 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–BX–2019–015 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11559 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 5.

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85967; File No. SR–ISE–2019–16]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow $1 or Greater Strike Price Intervals for Options on QQQ and IWM

May 30, 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 May 17, 2019, Nasdaq ISE, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow $1 or greater strike price intervals for options on certain Exchange-Traded Fund (''ETF'') Shares, as described below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's rules to allow $1 or greater strike price intervals for options listed on the PowerShares QQQ Trust (''QQQ'') and the iShares Russell 2000 Index Fund (''IWM''), consistent with recent changes proposed by Cboe Exchange, Inc. (''CBOE'') and approved by the Commission.[5]

Currently, Supplementary Material .14 to Rule 504 allows for the interval between strike prices of series of options on SPY, IVV, and DIA to be $1 or greater where the strike price is greater than $200. QQQ and IWM options, however, have historically traded on the Exchange with $1 intervals up to a strike price of $200 pursuant to Rule 504(h), which permits options on Exchange-Traded Fund Shares to be traded in intervals that were established on other exchanges prior to listing on the Exchange.[6] Above $200, these options classes trade with significantly wider $5 strike price intervals. The Exchange now proposes to modify Supplementary Material .14 to Rule 504 to allow $1 strike price intervals where the strike price is above $200 for QQQ and IWM options, in effect matching the strike setting regime for these products below $200 and also for options on SPY, IVV, and DIA. The Exchange believes that the proposed rule change would make QQQ and IWM options easier for investors and traders to use, and more tailored to their investment needs.

QQQ and IWM are designed to provide investors different ways to efficiently gain exposure to the equity markets and execute risk management, hedging, asset allocation and income generation strategies. QQQ is a unit investment trust designed to closely track the price and performance of the Nasdaq-100 Index (''NDX''), which represents the largest and most active non-financial domestic and international issues listed on The Nasdaq Stock Market based on market capitalization. Likewise, IWM is an index ETF designed to closely track the price and performance of the Russell 2000 Index (''RUT''), which represents the small capitalization sector of the U.S. equity market. In general, QQQ and IWM options provide investors with the benefit of trading broader markets in a manageably sized contract.

The value of QQQ is designed to approximate 1/40 the value of the underlying NDX. For example, if the NDX price level is 1400, QQQ strike prices generally would be expected to be priced around $35. The value of IWM is designed to approximate 1/10 the value of the underlying RUT. In the past year, NDX has climbed above a price level of 7500 and RUT climbed to a price level of approximately 1700 (both prior to the December 2018 market-wide decline). The prices for QQQ and IWM options have correspondingly increased within the same time period.[7] As the value of the underlying ETF (and the index the ETF tracks) and resulting strike prices for each option appreciates, investor and member demands to list additional strike prices ($1 increments) in QQQ and IWM options above $200 continue to increase. QQQ is among the most actively traded ETFs on the market. It is widely quoted as an indicator of technology stock price and investor confidence in the technology and telecommunication market spaces, a significant indicator of overall economic health. Similarly, IWM is among the most actively traded ETFs on the market and provides investors with an investment tool to gain exposure to small U.S. public companies. Industry-wide trade volume in QQQ more than doubled from 2017 to 2018. QQQ options and IWM options have grown to become two of the largest options contracts in terms of trading volume. Investors use these products to diversify their portfolios and benefit from market trends.

Accordingly, the Exchange believes that offering a wider base of QQQ and IWM options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed $1 strike price intervals above $200 in QQQ and IWM options significantly constricts investors' hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in QQQ and IWM, investors would have more efficient hedging and trading opportunities due to the lower $1 intervals. The proposed $1 intervals above the $200 strike price will result in having at-the-money series based upon the underlying ETFs moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that $1 intervals already exist below the $200 price point and that both QQQ and IWM have consistently inclined in price toward the $200 level, the Exchange believes that continuing to maintain the current $200 level (above which intervals increase 500% to $5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with QQQ and IWM options far outweighs any potential negative impact of allowing QQQ and IWM options to trade in more finely tailored intervals above the $200 price point.

The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing values in the underlying indices, and allow investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETFs. Under the current rule, where the next higher available series would be $5 away above a $200 strike price, the ability to roll such positions is effectively negated. Accordingly, to move a position from a $200 strike to a $205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. As discussed above, NDX and RUT have experienced continued, steady growth. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his/her open options position from a $200 to a

[5] *See* Securities Exchange Act Release No. 85754 (April 30, 2019), 84 FR 19823 (May 6, 2019) (SR–CBOE–2019–015).

[6] *See* Securities Exchange Act Release No. 44037 (March 2, 2001), 66 FR 14613 (March 13, 2001) (SR–ISE–01–08).

[7] For example, by the end of August 2018, QQQ was trading at more than $185 per share and IWM was trading at more than $170 per share.

$201 strike price, which is only a 0.5% move for the underlying. The Exchange believes that the proposed rule change will benefit investors by providing them the flexibility to more closely tailor their investment and hedging decisions using QQQ and IWM options.

By allowing series of QQQ and IWM options to be listed in $1 intervals between strike prices over $200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes that it and the Options Price Reporting Authority (''OPRA'') have the necessary system capacity to handle any potential additional traffic associated with this rule change. The Exchange also believes that members will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe this expansion will cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change to Supplementary Material .14 to Rule 504 will allow investors to more easily and effectively use QQQ and IWM options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in QQQ and IWM options where the strike price is greater than $200, and ensure that investors in both options are not at a disadvantage simply because of the strike price.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[10] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The rule change proposal allows the Exchange to respond to customer demand to allow QQQ and IWM options to trade in $1 intervals above a $200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality.

As noted above, QQQ and IWM options currently trade in wider $5 intervals above a $200 strike price, whereas the same products at or below a $200 strike price trade in $1 intervals. This creates a situation where contracts on the same options class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the $200 strike price, above which options intervals increase by 500%. This proposal remedies the situation by allowing QQQ and IWM options to trade in $1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Moreover, the proposal is consistent with changes adopted by CBOE and approved by the Commission.[11]

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. As discussed above, the Exchange further believes that its members will not have a capacity issue as a result of this proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive response to a recent CBOE filing approved by the Commission.[12] The Exchange believes that the proposed rule change is essential to ensure fair competition between markets, and will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of this requirement will ensure fair competition among the exchanges by allowing the Exchange to set the interval between strike prices of series of options on ETF shares of QQQ and IWM in a manner consistent with another exchange. Further, the Exchange states that because the proposed rule change is based on the rules of another exchange,[17] it does not introduce any new or novel regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[18]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1).

[11] *See supra* note 5.

[12] *See supra* note 5.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 5.

[18] For purposes only of waiving the 30-day operative delay, the Commission also has

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2019–16 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–ISE–2019–16. 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 a.m. and 3 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–ISE–2019–16 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11598 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85952; File No. SR–NYSE–2019–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

May 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 21, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services to update the description of the access to trading and execution systems provided with the purchase of access to the co-location local area networks. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange to update the description of the access to trading and execution services and connectivity to data provided to Users [5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, local area networks available in the data center.

To implement the changes, the Exchange proposes to amend paragraph one of General Note 4, which describes the access to trading and execution systems which a User receives when it purchases access to the LCN or IP network.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together with NYSE American, NYSE Arca, and NYSE Chicago, Inc., the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92) (notice of filing and immediate effectiveness of proposed rule change

The Exchange will announce the implementation date through a customer notice.

As set forth in the first paragraph of General Note 4, when a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the Exchange and the SRO Affiliates (together, the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO.[7] The Exchange proposes to revise such paragraph to reflect that a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of Global OTC (''Global OTC System''), subject to authorization by Global OTC.

In order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User any applicable fees charged to its subscribers by Global OTC. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.

The Exchange provides Users access to the Global OTC System and the Exchange Systems (''Access'') as a convenience to Users. Use of Access is completely voluntary. The Exchange is not aware of any impediment to third parties offering Access. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Global OTC

Global OTC is an affiliate of the Exchange, which has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8]

Unlike the NYSE Exchanges, Global OTC is not a national securities exchange registered with the Securities and Exchange Commission (''Commission'') under Section 6 of the Act.[9] Rather, Global OTC is an alternative trading system (''ATS'') [10] operated by a broker-dealer, a member of the Financial Industry Regulatory Authority. It facilitates transactions in over-the-counter (''OTC'') equity securities, providing publicly displayed, firm, auto-executable prices in the OTC securities marketplace. There is no overlap in the securities traded on the NYSE Exchanges and Global OTC: Members trade National Market System (''NMS'') securities on the NYSE Exchanges,[11] but Global OTC subscribers cannot trade NMS securities on Global OTC.

The Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers, including two ATSs.[12] Of those, the Exchange believes the OTC Markets ATS is the most comparable to Global OTC.[13] Both are inter-dealer quotation systems for OTC securities.[14] Global OTC and the OTC Markets' ATS are not fungible, however. The OTC Markets' ATS is a trade messaging system that displays market makers quotes and does not offer automatic executions. While Global OTC provides a limit order book, displays participants' orders, and executes orders pursuant to price/time priority, OTC Markets' ATS displays market makers' quotes by price priority, not time priority. In sum, OTC Markets' ATS is a market maker intermediary, whereas Global OTC is a trading platform.

The Proposed Amendments

To implement the change, the Exchange proposes to revise the first paragraph of General Note 4 as follows:

- Amend the first sentence to state that when a User purchases access to the LCN or IP network, it receives the ability to access the Global OTC System as well as the Exchange Systems, subject to authorization by Global OTC, the Exchange or Affiliate Exchange, as applicable;
- Amend the third sentence to note that a User can change the access to the Global OTC System that it receives at any time, subject to authorization by Global OTC; and
- Add a new fifth sentence stating that ''Global OTC offers access to the Global OTC System to its subscribers, such that a User does not have to purchase access to the LCN or IP network to obtain access to the Global OTC System.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

amending the Exchange's price list related to co-location services to increase LCN and IP network fees and add a description of access to trading and execution services and connectivity to Included Data Products).

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 79674 (December 22, 2016), 81 FR 96053 (December 29, 2016) (SR–NYSE–2016–45), fn. 21. Global OTC is operated by Archipelago Trading Services, Inc., which is a broker-dealer subsidiary of NYSE Group, Inc. (''NYSE Group''). NYSE Group is also the parent company of the Exchange.

[9] 15 U.S.C. 78f. Global OTC is not required to register as a national securities exchange because it operates under an exemption from the requirement to register as an exchange. *See* 17 CFR 240.3a1–1(a) and 17 CFR 240.300 through 304.

[10] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[11] *See* 17 CFR 242.600.

[12] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees). Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

[13] The OTC Markets' ATS is OTC Link. Global OTC is substantially smaller than OTC Markets' ATS: Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' ATS market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[14] The third inter-dealer quotation system is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[16] *See* 78 FR 51765, *supra* note 5, at 51766. NYSE American, NYSE Arca and NYSE National have submitted substantially the same proposed rule

Continued

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow Users to connect to the Global OTC System, thereby increasing Users' ability to tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of access that best suits their needs. Global OTC provides publicly displayed, firm, auto-executable prices in the OTC securities marketplace, and the Exchange believes that allowing Users to connect to the Global OTC System would promote price discovery and transparency in the OTC market, benefiting participants in such market. At the same time, Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable.

The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they would make the description of Access more accessible and transparent by including Global OTC, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network, avoiding any potential investor confusion. The proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network. The proposed rule change would also make clear that Access to each of the Exchange Systems and the Global OTC System is provided on the same terms. All Users that voluntarily select to access the LCN or IP network receive Access to the Exchange Systems and the Global OTC System, and are not subject to a charge for such Access above and beyond the fee paid for the relevant LCN or IP network access.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act for multiple reasons.

The proposed rule change is reasonable and equitable because, as stated above, it would also make clear that Access to each of the Exchange Systems and Global OTC System is provided on the same terms. The Exchange further believes that the Access to the Global OTC System described herein is equitably allocated and not unfairly discriminatory because all Users that voluntarily select to access the LCN or IP network receive the same Access, and are not subject to a charge for Access to Global OTC above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable. In addition to the service being completely voluntary, it is available to all Users on an equal basis. Users that opted to Access the Global OTC System would not receive access that is not available to all Users.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data

change to propose the changes described herein. *See* SR–NYSEAmer–2019–21, SR–NYSEArca–2019–40, and SR–NYSENAT–2019–13.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(4).

center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users that purchase access to the LCN or IP network with Access to the Global OTC System does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering Access to the Global OTC System, the Exchange gives each User additional options for addressing its access needs, responding to User demand for access options. The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor. Users that opt to Access the Global OTC System would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative

[20] 15 U.S.C. 78f(b)(8).

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would allow Users to have access to the Global OTC System during the operative delay period and would provide Users with options for connectivity to trading and execution services and the availability of products and services. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–31 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11561 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85951; File No. SR–NASDAQ–2019–042]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow $1 or Greater Strike Price Intervals for Options on QQQ and IWM

May 29, 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 May 17, 2019, The Nasdaq Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow $1 or greater strike price intervals for options on certain Exchange-Traded Fund (''ETF'') Shares, as described below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's rules to allow $1 or greater strike price intervals for options listed on the PowerShares QQQ Trust (''QQQ'') and the iShares Russell 2000 Index Fund (''IWM''), consistent with recent changes proposed by Cboe Exchange, Inc. (''CBOE'') and approved by the Commission.[5]

Currently, Chapter IV, Supplementary Material .01(c) to Section 6, allows for the interval between strike prices of series of options on SPY, IVV, and DIA to be $1 or greater where the strike price is greater than $200. QQQ and IWM options, however, currently trade on the Exchange with $1 intervals up to a strike price of $200 pursuant to Supplementary Material .01(b) to

[5] *See* Securities Exchange Act Release No. 85754 (April 30, 2019), 84 FR 19823 (May 6, 2019) (SR–CBOE–2019–015).

Section 6. Above $200, these options classes trade with significantly wider $5 strike price intervals. The Exchange now proposes to modify Supplementary Material .01(c) to Section 6 to allow $1 strike price intervals where the strike price is above $200 for QQQ and IWM options, in effect matching the strike setting regime for these products below $200 and also for options on SPY, IVV, and DIA. The Exchange believes that the proposed rule change would make QQQ and IWM options easier for investors and traders to use, and more tailored to their investment needs.

QQQ and IWM are designed to provide investors different ways to efficiently gain exposure to the equity markets and execute risk management, hedging, asset allocation and income generation strategies. QQQ is a unit investment trust designed to closely track the price and performance of the Nasdaq-100 Index (''NDX''), which represents the largest and most active non-financial domestic and international issues listed on The Nasdaq Stock Market based on market capitalization. Likewise, IWM is an index ETF designed to closely track the price and performance of the Russell 2000 Index (''RUT''), which represents the small capitalization sector of the U.S. equity market. In general, QQQ and IWM options provide investors with the benefit of trading broader markets in a manageably sized contract.

The value of QQQ is designed to approximate 1/40 the value of the underlying NDX. For example, if the NDX price level is 1400, QQQ strike prices generally would be expected to be priced around $35. The value of IWM is designed to approximate 1/10 the value of the underlying RUT. In the past year, NDX has climbed above a price level of 7500 and RUT climbed to a price level of approximately 1700 (both prior to the December 2018 market-wide decline). The prices for QQQ and IWM options have correspondingly increased within the same time period.[6] As the value of the underlying ETF (and the index the ETF tracks) and resulting strike prices for each option appreciates, investor and member demands to list additional strike prices ($1 increments) in QQQ and IWM options above $200 continue to increase. QQQ is among the most actively traded ETFs on the market. It is widely quoted as an indicator of technology stock price and investor confidence in the technology and telecommunication market spaces, a significant indicator of overall economic health. Similarly, IWM is among the most actively traded ETFs on the market and provides investors with an investment tool to gain exposure to small U.S. public companies. Industry-wide trade volume in QQQ more than doubled from 2017 to 2018. QQQ options and IWM options have grown to become two of the largest options contracts in terms of trading volume. Investors use these products to diversify their portfolios and benefit from market trends.

Accordingly, the Exchange believes that offering a wider base of QQQ and IWM options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed $1 strike price intervals above $200 in QQQ and IWM options significantly constricts investors' hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in QQQ and IWM, investors would have more efficient hedging and trading opportunities due to the lower $1 intervals. The proposed $1 intervals above the $200 strike price will result in having at-the-money series based upon the underlying ETFs moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that $1 intervals already exist below the $200 price point and that both QQQ and IWM have consistently inclined in price toward the $200 level, the Exchange believes that continuing to maintain the current $200 level (above which intervals increase 500% to $5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with QQQ and IWM options far outweighs any potential negative impact of allowing QQQ and IWM options to trade in more finely tailored intervals above the $200 price point.

The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing values in the underlying indices, and allow investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETFs. Under the current rule, where the next higher available series would be $5 away above a $200 strike price, the ability to roll such positions is effectively negated. Accordingly, to move a position from a $200 strike to a $205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. As discussed above, NDX and RUT have experienced continued, steady growth. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his/her open options position from a $200 to a $201 strike price, which is only a 0.5% move for the underlying. The Exchange believes that the proposed rule change will benefit investors by providing them the flexibility to more closely tailor their investment and hedging decisions using QQQ and IWM options.

By allowing series of QQQ and IWM options to be listed in $1 intervals between strike prices over $200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes that it and the Options Price Reporting Authority (''OPRA'') have the necessary system capacity to handle any potential additional traffic associated with this rule change. The Exchange also believes that members will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe this expansion will cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change to Chapter IV, Supplementary Material .01(c) to Section 6 will allow investors to more easily and effectively use QQQ and IWM options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in QQQ and IWM options where the strike price is greater than $200, and ensure that investors in both options are not at a disadvantage simply because of the strike price.

The Exchange also believes the proposed rule change is consistent with

[6] For example, by the end of August 2018, QQQ was trading at more than $185 per share and IWM was trading at more than $170 per share.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The rule change proposal allows the Exchange to respond to customer demand to allow QQQ and IWM options to trade in $1 intervals above a $200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality.

As noted above, QQQ and IWM options currently trade in wider $5 intervals above a $200 strike price, whereas the same products at or below a $200 strike price trade in $1 intervals. This creates a situation where contracts on the same options class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the $200 strike price, above which options intervals increase by 500%. This proposal remedies the situation by allowing QQQ and IWM options to trade in $1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. Moreover, the proposal is consistent with changes adopted by CBOE and approved by the Commission.[10]

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. As discussed above, the Exchange further believes that its members will not have a capacity issue as a result of this proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive response to a recent CBOE filing approved by the Commission.[11] The Exchange believes that the proposed rule change is essential to ensure fair competition between markets, and will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of this requirement will ensure fair competition among the exchanges by allowing the Exchange to set the interval between strike prices of series of options on ETF shares of QQQ and IWM in a manner consistent with another exchange. Further, the Exchange states that because the proposed rule change is based on the rules of another exchange,[16] it does not introduce any new or novel regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2019–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–042. 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,

[9] 15 U.S.C. 78f(b)(1).

[10] *See supra* note 5.

[11] *See supra* note 5.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 5.

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–042 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11565 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85959; File No. SR–NYSENAT–2019–13]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates Related to Co-location Services

May 29, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 21, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (the ''Price List'') related to co-location services to update the description of the access to trading and execution systems provided with the purchase of access to the co-location local area networks. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location[4] services offered by the Exchange to update the description of the access to trading and execution services and connectivity to data provided to Users[5] with connections to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, local area networks available in the data center.

To implement the changes, the Exchange proposes to amend paragraph one of General Note 4, which describes the access to trading and execution systems which a User receives when it purchases access to the LCN or IP network.[6]

The Exchange will announce the implementation date through a customer notice.

As set forth in the first paragraph of General Note 4, when a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the Exchange and the SRO Affiliates (together, the ''Exchange Systems''), provided the User has authorization from the Exchange or relevant Affiliate SRO.[7] The Exchange proposes to revise such paragraph to reflect that a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of Global OTC (''Global OTC System''), subject to authorization by Global OTC.

In order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User any applicable fees charged to its subscribers by Global OTC. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.

The Exchange provides Users access to the Global OTC System and the Exchange Systems (''Access'') as a convenience to Users. Use of Access is completely voluntary. The Exchange is not aware of any impediment to third parties offering Access. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Global OTC

Global OTC is an affiliate of the Exchange, which has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8]

Unlike the NYSE Exchanges, Global OTC is not a national securities exchange registered with the Securities and Exchange Commission (''Commission'') under Section 6 of the

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') on May 18, 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE Arca, Inc. (''NYSE Arca'' and together with NYSE, NYSE American, and NYSE Chicago, Inc., the ''Affiliate SROs''). *See id.* at note 11.

[6] *See id.* at 26315–26316.

[7] *See id.*

[8] *See id.* at 26322. Global OTC is operated by Archipelago Trading Services, Inc., which is a broker-dealer subsidiary of NYSE Group, Inc. (''NYSE Group''). NYSE Group is also the parent company of the Exchange.

Act.[9] Rather, Global OTC is an alternative trading system (''ATS'') [10] operated by a broker-dealer, a member of the Financial Industry Regulatory Authority. It facilitates transactions in over-the-counter (''OTC'') equity securities, providing publicly displayed, firm, auto-executable prices in the OTC securities marketplace. There is no overlap in the securities traded on the NYSE Exchanges and Global OTC: members trade National Market System (''NMS'') securities on the NYSE Exchanges,[11] but Global OTC subscribers cannot trade NMS securities on Global OTC.

The Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers, including two ATSs.[12] Of those, the Exchange believes the OTC Markets ATS is the most comparable to Global OTC.[13] Both are inter-dealer quotation systems for OTC securities.[14] Global OTC and the OTC Markets' ATS are not fungible, however. The OTC Markets' ATS is a trade messaging system that displays market makers quotes and does not offer automatic executions. While Global OTC provides a limit order book, displays participants' orders, and executes orders pursuant to price/time priority, OTC Markets' ATS displays market makers' quotes by price priority, not time priority. In sum, OTC Markets' ATS is a market maker intermediary, whereas Global OTC is a trading platform.

The Proposed Amendments

To implement the change, the Exchange proposes to revise the first paragraph of General Note 4 as follows:

- Amend the first sentence to state that when a User purchases access to the LCN or IP network, it receives the ability to access the Global OTC System as well as the Exchange Systems, subject to authorization by Global OTC, the Exchange or Affiliate Exchange, as applicable;
- Amend the third sentence to note that a User can change the access to the Global OTC System that it receives at any time, subject to authorization by Global OTC; and
- Add a new fifth sentence stating that ''Global OTC offers access to the Global OTC System to its subscribers, such that a User does not have to purchase access to the LCN or IP network to obtain access to the Global OTC System.''

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow Users to connect to the Global OTC System, thereby increasing Users' ability to tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of access that best suits their needs. Global OTC provides publicly displayed, firm, auto-executable prices in the OTC securities marketplace, and the Exchange believes that allowing Users to connect to the Global OTC System would promote price discovery and transparency in the OTC market, benefiting participants in such market. At the same time, Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable.

The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

[9] 15 U.S.C. 78f. Global OTC is not required to register as a national securities exchange because it operates under an exemption from the requirement to register as an exchange. *See* 17 CFR 240.3a1–1(a) and 17 CFR 240.300 through 304.

[10] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[11] *See* 17 CFR 242.600.

[12] *See* 83 FR 26314, *supra* note 5, at 26322. Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

[13] The OTC Markets' ATS is OTC Link. Global OTC is substantially smaller than OTC Markets' ATS: Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' ATS market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[14] The third inter-dealer quotation system is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[16] *See* 83 FR 26314, *supra* note 5, at 26315. NYSE, NYSE American, and NYSE Arca have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–31, SR–NYSEAmer–2019–21, and SR–NYSEArca–2019–40.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed revisions to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they would make the description of Access more accessible and transparent by including Global OTC, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network, avoiding any potential investor confusion. The proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network. The proposed rule change would also make clear that Access to each of the Exchange Systems and the Global OTC System is provided on the same terms. All Users that voluntarily select to access the LCN or IP network receive Access to the Exchange Systems and the Global OTC System, and are not subject to a charge for such Access above and beyond the fee paid for the relevant LCN or IP network access.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act for multiple reasons.

The proposed rule change is reasonable and equitable because, as stated above, it would also make clear that Access to each of the Exchange Systems and Global OTC System is provided on the same terms. The Exchange further believes that the Access to the Global OTC System described herein is equitably allocated and not unfairly discriminatory because all Users that voluntarily select to access the LCN or IP network receive the same Access, and are not subject to a charge for Access to Global OTC above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access the Global OTC System unless they wish to do so. Rather, a User only receives the Access that it selects, and a User can change what Access it receives at any time, subject to authorization from the Exchange, Affiliate SRO or Global OTC, as applicable. In addition to the service being completely voluntary, it is available to all Users on an equal basis. Users that opted to Access the Global OTC System would not receive access that is not available to all Users.

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users that purchase access to the LCN or IP network with Access to the Global OTC System does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering Access to the Global OTC System, the Exchange gives each User additional options for addressing its access needs, responding to User demand for access options. The Exchange provides Access as a convenience to Users. Use of Access is completely voluntary, and each User has several other access options available to it. As alternatives to using the Access to the Global OTC System provided by the Exchange, a User may access the Global OTC System through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access the Global OTC System through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor. Users that opt to Access the Global OTC System would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(8).

The Exchange believes that the proposed rule change does not unfairly discriminate between customers, issuers, brokers or dealers in not charging Users an additional fee to access Global OTC while charging a connectivity fee to access OTC Markets, because Global OTC and the OTC Markets ATS are not fungible. A User that opted to access Global OTC or OTC Markets would choose between them based on a variety of factors, including not just the reasonableness of fees charged, but also the extent to which it wished to have publicly displayed, firm, auto-executable prices. In addition, the Exchange is not the sole method a User can use to access the OTC Markets ATS. A User may use the SFTI network, a third party telecommunication network, a cross connect, or a combination thereof to access the OTC Markets ATS through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed revisions to General Note 4 would provide a more detailed and accurate description of the Access Users receive with their purchase of access to the LCN or IP network, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would allow Users to have access to the Global OTC System during the operative delay period and would provide Users with options for connectivity to trading and execution services and the availability of products and services. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–13. 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

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–13 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–11563 Filed 6–3–19; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2019–0023]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2019–0023].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 5, 2019. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Lump Sum Death Payment—20 CFR 404.390–404.392—0960–0013. SSA uses Form SSA–8 to collect information needed to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in section 202(i) of the Social Security Act (Act). Respondents complete the application for this one-time payment through use of the paper form, or person interview with an SSA employee either via telephone, or in person in a field office. For all personal interviews (either telephone or in-person), we collect the information in our electronic Modernized Claim System (MCS). Respondents are applicants for the LSDP.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8—MCS Screens	656,623	1	9	98,493
SSA–8—Paper Form	5,484	1	10	914
Totals	662,107			99,407

2. Report to United States Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable to Handle Funds/Report to the United States Social Security Administration—0960–0049. Section 203(c) of the Act requires the Commissioner of SSA to make benefit deductions, and provides for the Commissioner to impose penalty deductions on benefits of individuals who fail to make timely reports of events, which are cause for deductions. SSA uses Forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to: (1) Determine continuing entitlement to Social Security benefits; (2) correct benefit amounts for beneficiaries outside the United States; and (3) monitor the performance of representative payees outside the United States. This collection is mandatory as an annual (or every other year, depending on the country of residence) review for fraud prevention. In addition, the results can affect benefits by increasing or decreasing payment amount or by causing SSA to suspend or terminate benefits. The respondents are individuals living outside the United States who are receiving benefits on their own (or on behalf of someone else) under Title II of the Act.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7161–OCR–SM	42,314	1	15	10,579
SSA–7162–OCR–SM	426,448	1	5	35,537

[28] 17 CFR 200.30–3(a)(12).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Totals	468,762			46,116

3. Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284. Applicants for Social Security, Old Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments have the statutory right to appear in person, or through a representative, and present evidence about their claims at a hearing before an administrative law judge (ALJ). If claimants wish to waive this right to appear before an ALJ, they must do so in writing. Form HA–4608 serves as a written waiver for the claimant's right to a personal appearance before an ALJ. The ALJ uses the information we collect on Form HA–4608 to continue processing the case, and makes the completed form a part of the documentary evidence of record by placing it in the official record of the proceedings as an exhibit. Respondents are applicants or claimants for OASDI and SSI, or their representatives, who request to waive their right to appear in person before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4608	12,000	1	2	400

4. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment(s)—416.204—0960–0416. To determine whether SSI recipients (1) have met and continue to meet all statutory and regulatory requirements for SSI eligibility, and (2) are receiving the correct SSI payment amount, SSA conducts redeterminations of disability. Periodic collection of this information using Form SSA–8203–BK is the only way SSA can make these redeterminations; and collect the information as mandatory under the law. We routinely collect the information in field offices via personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The respondents are SSI recipients or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
MSSICS	1,468,220	1	19	464,936
Paper	135,357	1	20	45,119
Totals	1,603,577			510,055

5. Request for Social Security Statement—20 CFR 404.810—0960–0466. Section 205(c)(2)(A) of the Act requires the Commissioner of SSA to establish and maintain records of wages paid to, and amounts of self-employment income derived by, each individual as well as the periods in which such wages were paid and such income derived. An individual may complete and mail Form SSA–7004 to SSA to obtain a Statement of Earnings or Quarters of Coverage. SSA uses the information Form SSA–7004 collects to identify respondent's Social Security earnings records; extract posted earnings information; calculate potential benefit estimates; produce the resulting Social Security statements; and mail them to the requesters. The respondents are Social Security number holders requesting information about their Social Security earnings records and estimates of their potential benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7004	60,026	1	5	5,002

6. Function Report—Child (Birth to 1st Birthday, Age 1 to 3rd Birthday, Age 3 to 6th Birthday, Age 6 to 12th Birthday, Age 12 to 18th Birthday)—20 CFR 416.912 and 416.924a(a)(2)—0960–0542. As part of SSA's disability determination process, we use Forms SSA–3375–BK through SSA–3379–BK to request information from a child's parent or guardian for children applying for SSI. The five different versions of the form contain questions about the child's day-to-day functioning appropriate to a particular age group; thus, respondents use only one version of the form for each child. The adjudicative team (disability examiners and medical or psychological consultants) of State

disability determination services offices collect the information on the appropriate version of this form (in conjunction with medical and other evidence) to form a complete picture of the children's ability to function and their impairment-related limitations. The adjudicative team uses the completed profile to determine: (1) If each child's impairment(s) results in marked and severe functional limitations; and (2) whether each child is disabled. The respondents are parents and guardians of child applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3375; SSA–3376; SSA–3377; SSA–3378; SSA–3379	579,000	1	20	193,000

7. Private Printing and Modification of Prescribed Application and Other Forms—20 CFR 422.527—0960–0663. 20 CFR 422.527 of the Code of Federal Regulations requires a person, institution, or organization (third-party entities) to obtain approval from SSA prior to reproducing, duplicating, or privately printing any application or other form the agency owns. To obtain SSA's approval, entities must make their requests in writing using their company letterhead, providing the required information set forth in the regulation. SSA uses the information to: (1) Ensure requests comply with the law and regulations, and (2) process requests from third-party entities who want to reproduce, duplicate, or privately print any SSA application or other SSA form. SSA employees review the requests and provide approval via email or mail to the third-party entities. The respondents are third-party entities who submit a request to SSA to reproduce, duplicate, or privately print an SSA-owned form.

Type of Request: Revision of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 422.527	10	15	150	10	25

8. Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–0693. When individuals need help in obtaining evidence of their age in connection with Social Security number (SSN) card applications and claims for benefits, SSA can prepare the SSA–L106, Letter to Custodian of School Records, or SSA–L706, Letter to Custodian of Birth Records. SSA uses the SSA–L706 to determine the existence of primary evidence of age for SSN applicants. SSA uses both letters to verify with the issuing entity, when necessary, the authenticity of the record submitted by the SSN applicant or claimant. The respondents are schools, State and local bureaus of vital statistics, and religious entities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L106—Private Sector	18	1	10	3
SSA–L106—State/Local/Tribal Government	14	1	10	2
SSA–L706—Private Sector	429	1	10	72
SSA–L706—State/Local/Tribal Government	426	1	10	71
Totals	887	.....	.....	148

9. Government-to-Government Services Online Website Registration Form; Government-to-Government Services Online Website Account Modification/Deletion Form—20 CFR 401.45—0960–0757. The Government-to-Government Services Online (GSO) Website allows various external organizations to submit files to a variety of SSA systems and, in some cases, receive files in return. The SSA systems that process data transferred via GSO include, but are not limited to, systems responsible for disability processing and benefit determination or termination. SSA uses the information on Form SSA–159, Government-to-Government Online Website Registration Form, to register the requestor to use the GSO Website. Once we receive the SSA–159, SSA provides the user with account information and conducts a walkthrough of the GSO Website as necessary. Established organizations may submit Form SSA–159 to register additional users as well. The established requesting organizations can also complete Form SSA–160, Government-to-Government Online Website Account Modification/Deletion Form, to modify their online accounts (*e.g.,* address change). Respondents are State and local government agencies, and some private sector business entities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–159	1,151	1	15	288
SSA–160	410	1	15	103
Totals	1,561			391

10. Application Status—20 CFR 401.45—0960–0763. Application Status provides users with the capability to check the status of their pending Social Security claims via the National 800 Number Automated Telephone Service. Users need their SSN and a confirmation number to access this information. SSA systems determine the type of claim(s) the caller filed based upon the information provided. Subsequently, the automated telephone system provides callers with the option to choose the claim for which they wish to obtain status. If the caller applied for multiple claims, the automated system allows the caller to select only one claim at a time. Once callers select the claim(s) they are calling about, an automated voice advises them of the status of their claim. The respondents are current Social Security claimants who wish to check on the status of their claims. Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Application Status—Automated Telephone System	248,485	1	3	12,424

11. Statement for Determining Continuing Entitlement for Special Veterans Benefits (SVB)—0960–0782. Title VIII of the Act provides for the payment of Special Veterans benefits (SVB) to certain World War II veterans who reside outside of the United States. SSA regularly reviews individuals' claims for SVB to determine their continued eligibility and correct payment amounts. Individuals living outside the United States receiving SVB must report to SSA any changes that may affect their benefits. These include changes such as: (1) A change in mailing address or residence; (2) an increase or decrease in a pension, annuity, or other recurring benefit; (3) a return or visit to the United States for a calendar month or longer; or (4) an inability to manage benefits. SSA uses Form SSA–2010, to collect this information. Beneficiaries under age 90 receive notification of their benefit review along with the form every two years, and beneficiaries age 90 or older have face-face interviews with the Foreign Service Post every year who assist them in completing this form. Currently, the average respondent is over age 90, and very few respondents are under age 90. Respondents are beneficiaries living outside the United States collecting SVB.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2010	382	1	20	127

12. Evidence From Excluded Medical Sources of Evidence—20 CFR 404.1503b and 416.903b—0960–0803. Pursuant to its broad authority to regulate under sections 205(a), 702(a)(5), and 1631(d)(1) of the Act, SSA implemented section 223(d)(5)(C), as amended, through regulations at 20 CFR 404.1503b and 416.903b. These regulations require excluded medical sources to self-report their excluded status in writing each time they submit evidence related to a claim for benefits under Titles II or XVI of the Act. Excluded medical sources' duty to self-report their excluded status apply to evidence they submit to SSA directly or through a representative, claimant, or other individual or entity. The respondents for this collection are medical sources that: (1) Meet one of the exclusionary categories set forth in section 223(d)(5)(C)(i) of the Act, as amended; and (2) furnish evidence related to a claim for benefits under Titles II or XVI of the Act. Type of Request: Revision of an OMB-approved information collection.

Regulation section(s)	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
404.1503b(c), 416.903b(c)	50	60	3,000	20	1,000

Dated: May 30, 2019.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2019–11629 Filed 6–3–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10782]

Certification Pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a)(1)(2)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 (Div. K, Pub. L. 116–6) and similar provisions in prior year appropriations acts, I hereby certify that the Government of Egypt has dismissed the convictions issued by the Cairo Criminal Court on June 4, 2013, in ''Public Prosecution Case No. 1110 for the Year 2012'' and has not subjected the defendants to further prosecution.

This certification shall be published in the **Federal Register** and shall be reported to Congress, along with the accompanying Memorandum of Justification.

Dated: April 22, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–11612 Filed 6–3–19; 8:45 am]

BILLING CODE 4710–31–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately $34 billion (the $34 billion action) as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The Trade Representative's determination included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in July 2018, and stakeholders have submitted requests for the exclusion of specific products. In December 2018, March 2019, April 2019, and May 2019, the Trade Representative granted exclusion requests. This notice announces the Trade Representative's determination to grant additional exclusion requests, as specified in the Annex to this notice. The Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of the July 6, 2018 effective date of the $34 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), and 84 FR 21389 (May 14, 2019).

Effective July 6, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $34 billion action from the additional duties. The Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $34 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The July 11 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the Trade Representative would periodically announce decisions. In December 2018, the Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The Trade Representative granted a second, third, and fourth set of exclusions in March 2019, April 2019, and May 2019. *See* 84 FR 11152, 84 FR 16310, and 84 FR 21389. The Office of the United States Trade Representative regularly updates the status of each pending request and posts the status at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/section-301-exclusion-process.*

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the July 11 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade

Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex to this notice, the exclusions are established in two different formats: (1) As an exclusion for an existing 10-digit subheading from within an 8-digit subheading covered by the $34 billion action, or (2) as an exclusion reflected in specially prepared product descriptions. In particular, the exclusions take the form of one 10-digit HTSUS subheading, and 88 specially prepared product descriptions.

In accordance with the July 11 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

The exclusions in the Annex cover approximately 464 separate exclusion requests: The excluded 10-digit subheading covers 40 separate requests, and the 88 specially prepared product descriptions cover approximately 424 separate requests.

Paragraph A, subparagraphs (3)–(5) are conforming amendments to the HTSUS reflecting the modification made by the Annex to this notice.

As stated in the July 11 notice, the exclusions will apply as of the July 6, 2018 effective date of the $34 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

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 time on July 6, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By inserting the following new heading 9903.88.10 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1-General'', respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
''9903.88.10	Articles the product of China, as provided for in U.S. note 20(m) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable subheading''		

2. by inserting the following new U.S. note 20(m) to subchapter III of chapter 99 in numerical sequence:

''(m) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.01. See 83 FR 28710 (June 20, 2018) and 83 FR 32181 (July 11, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

(1) 8537.10.8000

(2) Parts of nonaircraft gas turbines, other than rotors, spindles, rotor assemblies, spindle assemblies or steel forgings (described in statistical reporting number 8411.99.9085)

(3) Oil well and oil field crank-balanced, long-stroke and beam pumps (described in statistical reporting number 8413.50.0010)

(4) Radial piston hydraulic fluid pumps weighing not over 500 grams (described in statistical reporting number 8413.50.0070)

(5) Centrifugal pumps, submersible, designed for use in apparatus for supplying water to pets (described in statistical reporting number 8413.70.2004)

(6) Centrifugal pumps, submersible, other than for use with machines for making cellulosic pulp, paper or paperboard; the foregoing pumps rated not over 1.5 kW (described in statistical reporting number 8413.70.2004)

(7) Submersible dual port pump designed for use in swimming pools (described in statistical reporting number 8413.70.2004)

(8) Submersible pump designed for use in aquariums, not over 325 mm tall (described in statistical reporting number 8413.70.2004)

(9) Submersible pump incorporating a magnetic drive motor (described in statistical reporting number 8413.70.2004)

(10) Submersible pumps, rated not over 1 horsepower, designed for use in pumping raw sewage (described in statistical reporting number 8413.70.2004)

(11) Sump pumps, submersible, rated not over 1 horsepower, activated by float switch (described in statistical reporting number 8413.70.2004)

(12) Centrifugal pumps, not for use with machines for making cellulosic pulp, paper or paperboard, not submersible, the foregoing single-stage, single-suction, close-coupled and with discharge outlet under 5.1 cm in diameter (described in statistical reporting number 8413.70.2005)

(13) Centrifugal pumps designed for eliminating condensate, the foregoing not elsewhere specified or included (described in statistical reporting number 8413.70.2090)

(14) Housings for water pumps of subheading 8413.30.90 (as described in subheading 8413.91.9010)

(15) Impellers for water pumps of subheading 8413.30.90 (described in statistical reporting number 8413.91.9010)

(16) Hydraulic pump positioning piston assemblies (described in statistical reporting number 8413.91.9060)

(17) Plastic reservoirs for motor vehicle brake master cylinders (described in statistical reporting number 8413.91.9060)
(18) Airend assemblies, inlet guide vanes, air-ends, compressor baseplates and backplates (described in statistical reporting number 8414.90.4190)
(19) Stand-alone icemaking machines, each having a rated capacity not exceeding 160 kg per day, capable of producing ice in pieces not larger than 40 cubic cm in any dimension (described in statistical reporting number 8418.69.0110)
(20) Assemblies of thermo-electric modules, whether or not presented with attached heat exchangers, fans, shrouds, temperature sensors or controllers (described in statistical reporting number 8418.69.0180)
(21) Coolers, non-compressor, powered by 12 V DC, each with an interior volume not exceeding 17 liters (described in statistical reporting number 8418.69.0180)
(22) Solar water heaters incorporating glass tube heat collectors and including glass tubes and stands with tanks (described in statistical reporting number 8419.19.0040)
(23) Distillation and rectifying equipment designed for use in the production of methylene diphenyl diisocyanate (described in statistical reporting number 8419.40.0080)
(24) Heat exchanger plates, cores, finned tubes, cones, shells, bonnets, flanges and baffles (described in statistical reporting number 8419.90.3000)
(25) Cast steel and steel structural forms designed for use in filtering machines, such machines used in mining or manufacturing facilities (described in statistical reporting number 8421.99.0080)
(26) Parts of air filtering machines or apparatus, the foregoing of cast steel and steel (described in statistical reporting number 8421.99.0080)
(27) Self-propelled fork-lift and platform trucks, each powered by an electric motor and controlled by walking operator (described in statistical reporting number 8427.10.8090)
(28) Garage door opener/closers (described in statistical reporting number 8428.90.0290)
(29) Hinged steel transfer machinery, designed for diverting goods from and to conveyor lines (described in statistical reporting number 8428.90.0290)
(30) Rotating bench, electrically powered, designed for turning a workpiece in a production line (described in statistical reporting number 8428.90.0290)
(31) Rotating fork machines, designed for lifting and depositing coiled steel bars in a production line (described in statistical reporting number 8428.90.0290)
(32) Vibratory, self-propelled tamping machines, each with drum roller (described in statistical reporting number 8429.40.0020)
(33) New, track-mounted hydraulic backhoes or hydraulic shovels, each with a 360-degree revolving superstructure (described in statistical reporting number 8429.52.1010)
(34) Pile drivers, diesel powered (described in statistical reporting number 8430.10.0000)
(35) Belt conveyor crossmember assemblies (described in statistical reporting number 8431.39.0010)
(36) Conveyor roller support brackets (described in statistical reporting number 8431.39.0010)
(37) Carriers designed for holding motor vehicles in overhead conveyors (described in statistical reporting number 8431.39.0010)
(38) Catenary idler stringers (described in statistical reporting number 8431.39.0010)
(39) Conveyor belt assemblies incorporating bearings (described in statistical reporting number 8431.39.0010)
(40) Conveyor line pans, the foregoing parts suitable for use solely or principally with coal mine conveyors (described in statistical reporting number 8431.39.0010)
(41) Conveyor spill plates (described in statistical reporting number 8431.39.0010)
(42) Welded frames designed to support conveyor rollers (described in statistical reporting number 8431.39.0010)
(43) Feed pushers, bale forks, scrapers and frames therefor (described in statistical reporting number 8431.49.9010)
(44) Complete sheet pile rolling mills (described in statistical reporting number 8455.22.0000)
(45) Rolling mills designed to form 4 to 5 ribbed metal panels not exceeding 95 cm wide (described in statistical reporting number 8455.22.0000)
(46) Double row ball bearings having an inner diameter exceeding 15 mm but not exceeding 32 mm, an outer diameter exceeding 38 mm but not exceeding 64 mm and a width exceeding 15 mm but not exceeding 29 mm (described in statistical reporting number 8482.10.5060)
(47) Needle roller bearings of a width not exceeding 30 mm (described in statistical reporting number 8482.40.0000)
(48) Outer bearing rings (described in statistical reporting number 8482.99.0500)
(49) Bearing shields (described in statistical reporting number 8482.99.6595)
(50) Coupling covers, including center members, flanged hubs, sleeves and shoes (described in statistical reporting number 8483.90.8010)
(51) AC multi-phase motors, each of an output exceeding 300 kW but not exceeding 310 kW, fitted with pulleys and brakes to raise and lower passenger elevators (described in statistical reporting number 8501.53.8040)
(52) Regenerative speed drive controllers for controlling speed of electric motors for elevators (described in statistical reporting number 8504.40.4000)
(53) Speed drive controllers for electric motors, each such controller measuring 100 mm or more but not over 130 mm in length, 40 mm or more but not over 125 mm in width and 24 mm or more but not over 85 mm in height (described in statistical reporting number 8404.40.4000)
(54) Speed drive controllers for electric motors, the foregoing operating at 250 A or more but not over 500 A (described in statistical reporting number 8504.40.0000)
(55) Variable frequency drive controllers for electric motors, each weighing more than 1 kg but not more than 11 kg (described in statistical reporting number 8504.40.4000)
(56) Printed circuit assemblies of the goods of subheading 8504.40 or 8504.50 for telecommunication apparatus, each measuring 4 cm to 6 cm in width and 10 cm to 12 cm in length, that converts 36 V DC to 90 V AC (described in statistical reporting number 8504.90.6500)
(57) Printed circuit assemblies of the goods of subheading 8504.40 or 8504.50 for telecommunication apparatus, each measuring 7 cm to 9 cm in width and 18 cm to 20 cm in length, having 2 switches, for power protection to prevent electrical back feeding (described in statistical reporting number 8504.90.6500)
(58) Printed circuit assemblies of the goods of subheading 8504.40 or 8504.50 for telecommunication apparatus, the foregoing serving as controllers for power supplies, each measuring 5 cm to 7 cm in width and 11 cm to 14 cm in length, having 50 pin on side header

(described in statistical reporting number 8504.90.6500)
(59) Printed circuit assemblies of the goods of subheading 8504.40 or 8504.50 for telecommunication apparatus, the foregoing serving as noise filters, each measuring 18 cm to 20 cm in width and 25 cm to 27 cm in length, populated with semiconductor devices and 4 heat sinks (described in statistical reporting number 8504.90.6500)
(60) Radio transceivers operating on frequencies from 46 MHz to 468 MHz, each designed for installation in motor vehicles (described in statistical reporting number 8525.60.1050)
(61) Antennas, of base metal and fiberglass (described in statistical reporting number 8529.10.4040)
(62) Projector parts (described in statistical reporting number 8529.90.9900)
(63) Electromechanical relays, for a voltage not exceeding 24 V, other than automotive flashers, with contacts rated at 10 A or more, measuring not over 80 mm in any dimension (described in statistical reporting number 8536.41.0050)
(64) Push-button switches, rated at over 5 A, measuring no more than 14.4 cm by 11.6 cm by 6.4 cm (described in statistical reporting number 8536.50.9035)
(65) Push-button switches, rated at over 5 A, measuring no more than 14.6 cm by 8 cm by 14.1 cm (described in statistical reporting number 8536.50.9035)
(66) Push-button switches, rated at over 5 A, measuring no more than 19.1 cm by 8.3 cm by 14.1 cm (described in statistical reporting number 8536.50.9035)
(67) Push-button switches, rated at over 5 A, measuring no more than 19.7 cm by 11.8 cm by 8.3 cm (described in statistical reporting number 8536.50.9035)
(68) Push-button switches, rated at over 5 A, measuring no more than 19.7 cm by 9.8 cm by 16.5 cm (described in statistical reporting number 8536.50.9035)
(69) Push-button switches, rated at over 5 A, measuring no more than 21 cm by 13.3 cm by 9 cm (described in statistical reporting number 8536.50.9035)
(70) Push-button switches, rated at over 5 A, measuring no more than 23.5 cm by 8 cm by 13.1 cm (described in statistical reporting number 8536.50.9035)
(71) Push-button switches, rated at over 5 A, measuring no more than 6 cm by 14.1 cm by 11 cm (described in statistical reporting number 8536.50.9035)
(72) Push-pull switches, for a voltage not exceeding 1,000 V, designed for use in motor vehicles (described in statistical reporting number 8536.50.9065)
(73) Bullet connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(74) Butt connectors, other than closed end, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(75) Closed-end butt connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(76) Crimp connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(77) Insulated tab electrical connectors and tab receptacle electrical connectors, for a voltage not exceeding 1,000 V, crimp-type, with either a tab measuring not over 6.4 mm in width or a receptacle for tabs measuring not over 6.4 mm in width (described in statistical reporting number 8536.90.4000)
(78) Junction blocks, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(79) Lug connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(80) Ring connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(81) Spade connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(82) Spring clip (''alligator clip'') terminals, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(83) Terminal blocks, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(84) Wire tap connectors, for a voltage not exceeding 1,000 V (described in statistical reporting number 8536.90.4000)
(85) Magnesium anodes, each not exceeding 48 kg in weight (described in statistical reporting number 8543.30.9040)
(86) Disposable self-adhesive brain monitoring sensor patches for use with an oximeter, each incorporating a circuit board, light-emitting diode (LED), photo diodes and memory device and a connector (described in statistical reporting number 9018.19.9560)
(87) Disposable stainless steel subdermal needle electrodes with accompanying harness for use with electromyography (EMG) equipment (described in statistical reporting number 9018.19.9560)
(88) Disposable surface electrodes for intra-operative neuromonitoring (''IONM'') systems, each composed of a surface electrode pad, an insulated wire, and a standard DIN 42802 connector (described in statistical reporting number 9018.19.9560)
(89) Machines for testing the hardness of metals (described in statistical reporting number 9024.10.0000)''

3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III of chapter 99 by:

a. Deleting the word ''or'' where it appears after the phrase ''U.S. note 20(j) to subchapter III of chapter 99;''; and

b. inserting ''; or (5) heading 9903.88.10 and U.S. note 20(m) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(k) to subchapter III of chapter 99'', where it appears at the end of the sentence.

4. by amending the first sentence of U.S. note 20(b) to subchapter III of chapter 99 by:

a. Deleting the word ''or'' where it appears after the phrase ''U.S. note 20(j) to subchapter III of chapter 99;''; and

b. inserting ''; or (5) heading 9903.88.10 and U.S. note 20(m) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(k) to subchapter III of chapter 99'', where it appears at the end of the sentence.

5. by amending the Article Description of heading 9903.88.01:

a. By deleting ''9903.88.07 or'';

b. by inserting in lieu thereof ''9903.88.07, ''; and

c. by inserting ''or 9903.88.10,'' after ''9903.88.08,''.

[FR Doc. 2019–11573 Filed 6–3–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2019–0019]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 16, 2019.

ADDRESSES: You may submit comments identified by DOT Docket ID 2019–0019 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lindsey Svendsen, 202–366–2035, or Arnold Feldman, 202–366–2028, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Alternative Uses of the Right of Way.

Background: Government agencies that acquire real property for a Federal-aid highway project in which Federal funds participated in any phase, are charged with managing the acquired property after the project is completed, as described in 23 CFR 710 subpart D—Real Property Management. As a part of this consideration, any excess or available right-of-way (ROW) for potential disposal must be determined and inventoried. Each State Department of Transportation (SDOT) must track, manage and update its inventory continually until the property is disposed.

This survey will collect information that will support analysis of the current state of the practice of Alternative Uses of the ROW nationwide. The report will identify current processes and tools used by SDOTs to identify and track ROW available for alternative uses, the types of alternative use requests they receive, and any safety, operational, or legal issues related to alternative uses. The survey will also identify additional opportunities for improving the existing processes, tools for identifying and tracking ROW that can streamline agencies' Property Management programs and provide information to states that have shown interest in alternative uses.

Respondents: Each of the 52 SDOTs (for the 50 states, the District of Columbia, and Puerto Rico) will be asked to respond to a written questionnaire. A subset of the state DOT's will be asked to participate in follow up interviews.

Frequency: One-time survey.

Estimated Average Burden per Response: Approximately 2 hours per survey response and 1 hour per interview.

Estimated Total Annual Burden Hours: Approximately 120 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued On: May 29, 2019.

Michael Howell,

Information Collection Officer.

[FR Doc. 2019–11608 Filed 6–3–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Saint Lawrence Seaway Development Corporation Advisory Board—Notice of Public Meetings

AGENCY: Saint Lawrence Seaway Development Corporation (SLSDC); USDOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the public meeting via conference call of the Saint Lawrence Seaway Development Corporation Advisory Board.

DATES: The public meeting will be held on (all times Eastern):

- Tuesday, June 18, 2019 from 2:00 p.m.–4:00 p.m. EST.

ADDRESSES: The meeting will be held via conference call at the SLSDC's Headquarters, 55 M Street SE, Suite 930, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Wayne Williams, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590; 202–366–0091.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The agenda for this meeting will be as follows:

June 18, 2019 From 2:00 p.m.–4:00 p.m. EST

1. Opening Remarks
2. Consideration of Minutes of Past Meeting
3. Quarterly Report
4. Old and New Business
5. Closing Discussion
6. Adjournment

Public Participation

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact the person listed under the heading, **FOR FURTHER INFORMATION CONTACT**, not later than Friday, June 14, 2019. Any member of the public may present a written statement to the Advisory Board at any time.

Carrie Lavigne,

(Approving Official) Chief Counsel, Saint Lawrence Seaway Development Corporation.

[FR Doc. 2019–11607 Filed 6–3–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee; Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) will hold a public meeting on Wednesday, June 19, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Deneroff, Office of National Public Liaison, at (202) 317–6851, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the ETAAC will be held on Wednesday, June 19, 2019 from 9:00 a.m. to 12:00 p.m. at 1111 Constitution Avenue NW, Washington, DC 20224. The purpose of the ETAAC is to provide continuing advice with regard to the development and implementation of the IRS organizational strategy for electronic tax administration. ETAAC is an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud. It supports the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements. Due to limited seating and security requirements, call or email Michael Deneroff to confirm your attendance. Mr. Deneroff can be reached at 202–317–6851 or *PublicLiaison@irs.gov.* Should you wish the ETAAC to consider a written statement, please call 202–317–6851 or email: *PublicLiaison@irs.gov.*

Dated: May 23, 2019.

John Lipold,

Designated Federal Official, Branch Chief, National Public Liaison.

[FR Doc. 2019–11294 Filed 6–3–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Agency Information Collection Activity Under OMB Review: Application for Benefits for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0572'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0572'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Application for Benefits for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0304 is used to determine the monetary allowance for a child born with Spina Bifida or certain birth defects who is the natural child of a Vietnam and certain Korea service veterans. Without this information, VA would be unable to effectively administer 38 U.S.C. 1805 or 38 U.S.C. 1815. VA Form 21–0304 has been updated to include; a new standardized format with sectional formatting and additional signature sections for witnesses, alternate, and power of attorney signers. This is a non-substantive change and does not increase the burden estimate.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 50 on March 14, 2019, pages 9413 and 9414.

Affected Public: Individuals or Households.

Estimated Annual Burden: 72 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 430.

By direction of the Secretary.

Danny S. Green,

Interim Department Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–11583 Filed 6–3–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Agency Information Collection Activity Under OMB Review: Request for Details of Expenses

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through

electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Request for Details of Expenses, VA Form 21P–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. 38 U.S.C. 1522 Net Worth Limitation provides that VBA will deny or discontinue payment of pension benefits if it is reasonable that some part of the corpus of the claimant's or beneficiary's estate be consumed for his or her maintenance. VA codified this requirement at 38 CFR 3.274.

VBA uses the information collected on this form as evidence of additional circumstances which may affect entitlement determinations pursuant to 38 U.S.C.1522. The information is used as a counterbalance to a claimant's substantial estate and/or annual income.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at FR 84, No. 50, pages 9412 and 9413.

Affected Public: Individuals and households.

Estimated Annual Burden: 5,700.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk Department of Veterans Affairs.

[FR Doc. 2019–11585 Filed 6–3–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 107 June 4, 2019

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Reviews; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0684, EPA–HQ–OAR–2017–0685; FRL–9993–45–OAR]

RIN 2060–AT51

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans and Surface Coating of Metal Coil Residual Risk and Technology Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to address the results of the residual risk and technology reviews (RTRs) that the EPA is required to conduct in accordance with the Clean Air Act (CAA) with regard to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the Surface Coating of Metal Cans and the NESHAP for the Surface Coating of Metal Coil. The EPA is proposing to find the risks due to emissions of air toxics from these source categories under the current standards to be acceptable and that the standards provide an ample margin of safety to protect public health. We are proposing no revisions to the numerical emission limits based on these analyses. The EPA is proposing to amend provisions addressing emissions during periods of startup, shutdown, and malfunction (SSM); to amend provisions regarding electronic reporting of performance test results; to amend provisions regarding monitoring requirements; and to make miscellaneous clarifying and technical corrections.

DATES: *Comments.* Comments must be received on or before July 19, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before July 5, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before June 10, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-cans-national-emission-standards-hazardous* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-coil-national-emission-standards-hazardous*. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2017–0684 for 40 Code of Federal Regulations (CFR) part 63, subpart KKKK, Surface Coating of Metal Cans, and Docket ID No. EPA–HQ–OAR–2017–0685 for 40 CFR part 63, subpart SSSS, Surface Coating of Metal Coil, as applicable, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*. Include Docket ID No. EPA–HQ–OAR–2017–0684 or EPA–HQ–OAR–2017–0685 (specify the applicable docket number) in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2017–0684 or EPA–HQ–OAR–2017–0685 (specify the applicable docket number).
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0684 or EPA–HQ–OAR–2017–0685 (specify the applicable docket number), Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the applicable Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Paula Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov*. For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.* For questions about monitoring and testing requirements, contact Mr. Ketan Patel, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9736; fax number: (919) 541–4991; and email address: *patel.ketan@epa.gov.* For information about the applicability of any of these NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Nancy Perry at (919) 541–5628 or by email at *perry.nancy@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established two separate dockets for this rulemaking. Docket ID No. EPA–HQ–OAR–2017–0684 has been established for 40 CFR part 63, subpart KKKK, Surface Coating of Metal Cans, and Docket ID No. EPA–HQ–OAR–2017–0685 has been established for 40 CFR part 63, subpart SSSS, Surface Coating of Metal Coil. All documents in the dockets are listed in *Regulations.gov*. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0684 for 40 CFR part 63, subpart KKKK, Surface Coating of Metal Cans (Metal Cans Docket), or Docket ID No. EPA–HQ–OAR–2017–0685 for 40 CFR part 63, subpart SSSS, Surface Coating of Metal Coil (Metal Coil Docket), as applicable to your comments. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0684 for 40 CFR part 63, subpart KKKK, Surface Coating of Metal Cans (Metal Cans Docket), or Docket ID No. EPA–HQ–OAR–2017–0685 for 40 CFR part 63, subpart SSSS, Surface Coating of Metal Coil (Metal Coil Docket), as applicable.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACA American Coatings Association
AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
ASTM American Society for Testing and Materials
BACT best available control technology
BPA bisphenol A
BPA–NI not intentionally containing BPA
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emissions monitoring systems
CFR Code of Federal Regulations
DGME diethylene glycol monobutyl ether
ECHO Enforcement and Compliance History Online
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
FR Federal Register
GACT generally available control technology gal gallon
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.1.0
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
HQREL hazard quotient recommended exposure limit
IBR incorporation by reference
ICAC Institute of Clean Air Companies
ICR Information Collection Request
IRIS Integrated Risk Information System
kg kilogram
km kilometer
LAER lowest achievable emission rate
lb pound
MACT maximum achievable control technology
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
mm millimeters
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEI National Emission Inventory
NESHAP national emission standards for hazardous air pollutants
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OCE overall control efficiency
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
POM polycyclic organic matter
ppmv parts per million by volume
PRA Paperwork Reduction Act
PTE permanent total enclosure
RACT reasonably available control technology
RBLC RACT/BACT/LAER Clearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTO regenerative thermal oxidizer
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
µg/m3 micrograms per cubic meter
UMRA Unfunded Mandates Reform Act

URE unit risk estimate
VCS voluntary consensus standards
VOC volatile organic compound

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the Surface Coating of Metal Cans source category includes any facility engaged in the coating of metal cans, including: One- and two-piece draw and iron can body coating, sheet coating, three-piece can body assembly coating, or end coating. We estimate that five major source facilities engaged in metal can coating would be subject to this proposal. The Surface Coating of Metal Coil source category includes any facility engaged in the surface coating of metal coil that is a major source of hazardous air pollutant (HAP) emissions. Metal coil is defined as any continuous metal strip (with a thickness of 0.15 millimeters (mm) or more) that is packaged in a roll or coil prior to coating. We estimate that 48 major source facilities engaged in metal coil coating would be subject to this proposal.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS code [1]	Regulated entities [2]
Surface Coating of Metal Cans	332431, 332115, 332116, 332812, 332999	Two-piece Beverage Can Facilities, Three-piece Food Can Facilities, Two-piece Draw and Iron Facilities, One-piece Aerosol Can Facilities.
	332431	Can Assembly Facilities.
	332812	End Manufacturing Facilities.
Surface Coating of Metal Coil	325992	Photographic Film, Paper, Plate, and Chemical Manufacturing.
	326199	All Other Plastics Product Manufacturing.
	331110	Iron and Steel Mills and Ferroalloy Manufacturing.
	331221	Rolled Steel Shape Manufacturing.
	331315	Aluminum Sheet, Plate, and Foil Manufacturing.
	331318	Other Aluminum Rolling, Drawing, and Extruding.
	331420	Copper Rolling, Drawing, Extruding, and Alloying.
	332311	Prefabricated Metal Building and Component Manufacturing.
	332312	Fabricated Structural Metal Manufacturing.
	332322	Sheet Metal Work Manufacturing.
	[3] 332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.
	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
	333249	Other Industrial Machinery Manufacturing.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION—Continued

NESHAP and source category	NAICS code [1]	Regulated entities [2]
	337920	Blind and Shade Manufacturing.

[1] North American Industry Classification System.
[2] Regulated entities are major source facilities that apply surface coatings to these parts or products.
[3] The majority of coil coating facilities are included in NAICS Code 332812.

B. Where can I get a copy of this document and other related information?

In addition to being available in the dockets for this action, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-cans-national-emission-standards-hazardous* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-coil-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at these same websites. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

Redline versions of the regulatory language that incorporates the proposed changes in this action are available in the Metal Cans and the Metal Coil Dockets (Docket ID No. EPA–HQ–OAR–2017–0684 and Docket ID No. EPA–HQ–OAR–2017–0685, respectively).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*).[1] Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the dockets for each subpart in this rulemaking (Docket ID No. EPA–HQ–OAR–2017–0684 for Metal Cans Coating and Docket ID No. EPA–HQ–OAR–2017–0685 for Metal Coil Coating).

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health

[1] In addition, section 301 of the CAA provides general authority for the Administrator to ''prescribe such regulations as are necessary to carry out his functions'' under the CAA.

information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)[2] of approximately 1-in-10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What are the source categories and how do the current NESHAP regulate their HAP emissions?

1. What is the Surface Coating of Metal Cans source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the Surface Coating of Metal Cans source category was promulgated on November 13, 2003 (68 FR 64432), and is codified at 40 CFR part 63, subpart KKKK. Technical corrections and clarifying amendments were promulgated on January 6, 2006 (71 FR 1386). The Surface Coating of Metal Cans NESHAP applies to the surface coating and related operations at each new, reconstructed, and existing affected source of HAP emissions at facilities that are major sources and are engaged in the surface coating of metal cans and ends (including decorative tins) and metal crowns and closures. The Surface Coating of Metal Cans NESHAP (40 CFR 63.3561) defines a ''metal can'' as ''a single-walled container manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch)'' and includes coating operations for the four following subcategories:

- One- and two-piece draw and iron can body coating—includes one-piece aerosol cans, defined as an ''aerosol can formed by the draw and iron process to which no ends are attached and a valve is placed directly on top'' and two-piece draw and iron cans, defined as a ''steel or aluminum can manufactured by the draw and iron process.'' These include two-piece beverage cans manufactured to contain drinkable liquids, such as beer, soft drinks, or fruit juices, and two-piece food cans designed to contain edible products other than beverages and to be hermetically sealed.
- Sheetcoating—includes all the flat metal sheetcoating operations associated with the manufacture of three-piece cans, decorative tins, crowns, and closures.
- Three-piece can body assembly coating—includes three-piece aerosol cans, defined as a ''steel aerosol can formed by the three-piece can assembly process manufactured to contain food or nonfood products,'' and three-piece food cans, defined as a ''steel can formed by the three-piece can assembly process manufactured to contain edible products and designed to be hermetically sealed.''
- End coating—includes the application of end seal compounds and repair spray coatings to metal can ends and includes three distinct coating type segments reflecting different end uses: Aseptic end seal compounds, non-aseptic end seal compounds, and repair spray coatings.

The Surface Coating of Metal Cans NESHAP defines a ''decorative tin'' as ''a single-walled container, designed to be covered or uncovered that is manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch) and is normally coated on the exterior surface with decorative coatings. Decorative tins may contain foods but are not hermetically sealed and are not subject to food processing steps such as retort or pasteurization. Interior coatings are not usually applied to protect the metal and contents from chemical interaction.''

The Surface Coating of Metal Cans NESHAP also defines a ''coating'' as ''a material that is applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants.'' Fusion pastes, ink jet markings, mist solutions, and lubricants, as well as decorative, protective, or functional materials that consist only of protective oils for metals, acids, bases, or any combination of these substances, are not considered coatings under 40 CFR part 63, subpart KKKK.

Based on our search of the National Emission Inventory (NEI) (*www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei*) and the EPA's Enforcement and Compliance History Online (ECHO) database (*echo.epa.gov*) and a review of active air emissions permits, we estimate that five facilities are subject to the Surface Coating of Metal Cans NESHAP. A complete list of facilities subject to the Surface Coating of Metal Cans NESHAP is available in Appendix 1 to the memorandum titled *Technology Review for Surface Coating Operations in the Metal Cans Category,* in the Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684).

b. HAP Emission Sources

The primary HAP emitted from metal can surface coating operations are organic HAP and include glycol ethers, formaldehyde, xylenes, toluene, methyl isobutyl ketone, 2-(hexyloxy) ethanol, ethyl benzene, and methanol. These HAP account for 99 percent of the HAP emissions from the source category. The HAP emissions from the metal cans category occur from coating application lines, drying and curing ovens, mixing and thinning areas, and cleaning of equipment. The coating application lines and the drying and curing ovens are the largest sources of HAP emissions. The coating application lines apply an exterior base coat to two- and three-piece cans using a lithographic/printing (*i.e.,* roll) application process. The inside, side seam, and repair coatings are spray applied using airless spray equipment and are a minor portion of the can coating operations. As indicated by the name, repair spray coatings are used to cover breaks in the coating that are caused during the formation of the score in easy-open ends or to provide, after the manufacturing process, an additional protective layer for corrosion resistance.

[2] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

Inorganic HAP emissions were considered in the development of the Surface Coating of Metal Cans NESHAP. Inorganic HAP, including chromium and manganese compounds, are contained in some of the coatings used by this source category. However, the EPA determined that no controls were needed because the coatings used that may contain inorganic HAP were not spray applied. Instead, these coatings were roll applied through direct contact (similar to lithographic printing) with the surface to which they were being applied, and the inorganic HAP became part of the cured coating.[3] No inorganic HAP were reported in the NEI data used for this RTR for surface coating operations at major source metal can coating facilities.

c. NESHAP Requirements for Control of HAP

We estimated that the Surface Coating of Metal Cans NESHAP requirements would reduce the emissions of organic HAP from the source category by 71 percent or 6,800 tpy (68 FR 2110, January 15, 2003). This estimate included two HAP that were since delisted. The delisting of ethylene glycol monobutyl ether occurred in 2004, and the delisting of methyl ethyl ketone occurred in 2005.

The NESHAP specifies numerical emission limits for existing sources and for new and reconstructed sources for organic HAP emissions according to four can coating subcategories. The organic HAP emission limits for existing sources conducting: (1) One- and two-piece draw and iron can body coating (includes two-piece beverage cans, two-piece food cans, and one-piece aerosol cans) ranges from 0.07 to 0.12 kilogram (kg) HAP/liter of coating solids (or 0.59 to 0.99 pound/gallon (lb/gal)); (2) sheet coating is 0.03 kg HAP/liter of coating solids (or 0.26 lb/gal); (3) three piece can assembly (includes inside spray, aseptic, and non-aseptic side seam stripes on food cans, side seam stripes on general line non-food cans, and side seam stripes on aerosol cans) ranges from 0.29 to 1.94 kg HAP/liter of coating solids (or 2.43 to 16.16 lb/gal); and (4) end coating (includes aseptic and non-aseptic end seal compounds and repair spray coatings) ranges from zero to 2.06 kg HAP/liter of coating solids (or zero to 17.17 lb/gal). The organic HAP emission limits for new and reconstructed sources conducting: (1) One and two-piece draw and iron can body coating ranges from 0.04 to 0.08 kg HAP/liter of coating solids (or 0.31 to 0.65 lb/gal); (2) sheet coating is 0.02 kg HAP/liter of coating solids (or 0.17 lb/gal); (3) three piece can assembly ranges from 0.12 to 1.48 kg HAP/liter of coating solids (or 1.03 to 12.37 lb/gal); and (4) end coating ranges from zero to 0.64 kg HAP/liter of coating solids (or zero to 5.34 lb/gal). The specific organic HAP emission limits for each can coating subcategory are listed in Table 3 of the memorandum titled *Technology Review for Surface Coating Operations in the Metal Cans Category,* in the Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684).

Compliance with the Surface Coating of Metal Cans NESHAP emission limits can be achieved using several different options, including a compliant material option, an emission rate without add-on controls option (averaging option), an emission rate with add-on controls option, or a control efficiency/outlet concentration. For any coating operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards.

If the facility uses the emission rate with add-on controls option, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) using that option. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

2. What is the Surface Coating of Metal Coil source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the Surface Coating of Metal Coil source category was promulgated on June 10, 2002 (67 FR 39794), and is codified at 40 CFR part 63, subpart SSSS. A technical correction to the final rule was published on March 17, 2003 (68 FR 12590). The Surface Coating of Metal Coil NESHAP applies to owners or operators of metal coil surface coating operations at facilities that are major sources of HAP.

The Surface Coating of Metal Coil NESHAP (40 CFR 63.5100) applies to the collection of all coil coating lines at a facility and defines a coil coating line as the process for metal coil coating that includes the web unwind or feed station, a series of one or more coating stations, associated curing ovens, wet sections, and quench stations. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material. The Surface Coating of Metal Coil NESHAP (40 CFR 63.5110) defines a coil coating operation as the collection of equipment used to apply an organic coating to the surface of any continuous metal strip that is 0.006 inch (0.15 millimeter (mm)) thick or more that is packaged in a roll or coil. The Surface Coating of Metal Coil NESHAP also defines a coating material as the coating and other products (*e.g.,* a catalyst and resin in multi-component coatings) combined to make a single material at the coating facility that is applied to metal coil and includes organic solvents used to thin a coating prior to application to the metal coil.

Based on our search of the NEI and EPA's ECHO database and a review of active air emission permits, we estimate that 48 facilities are subject to the Surface Coating of Metal Coil NESHAP. A complete list of facilities we identified as subject to the Surface Coating of Metal Coil NESHAP is available in Appendix 1 to the memorandum titled *Residual Risk Assessment for the Surface Coating of Metal Coil Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* (hereafter referred to as the *Metal Coil Risk Assessment Report*), in the Surface Coating of Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685).

b. HAP Emission Sources

The primary HAP emitted from metal coil coating operations are organic HAP and include xylenes, glycol ethers, naphthalene, isophorone, toluene, diethylene glycol monobutyl ether (DGME), and ethyl benzene. The majority of organic HAP emissions are from the coating application and the curing ovens.

Inorganic HAP emissions were considered in the development of the Surface Coating of Metal Coil NESHAP. Based on information reported in survey responses during the development of the 2002 proposed NESHAP, inorganic HAP were present in the pigments and film-forming components of some coatings used by this source category. However, we concluded that inorganic HAP are not likely to be emitted from these sources because of the application techniques used (67 FR 46032, July 11, 2002). The data obtained from the NEI and the Toxics Release Inventory for

[3] *National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans Background Information for Final Standards.* Summary of Public Comments and Responses. EPA 453/R–03–009. August 2003. Section 2.5.4.

this RTR included low quantities of inorganic HAP for major source facilities that conduct metal coil operations. Further investigation of these sources concluded that these inorganic emissions were reported in error.

c. NESHAP Requirements for Control of HAP

We estimated that the Surface Coating of Metal Coil NESHAP requirements would reduce the emissions of organic HAP from the source category by approximately 55 percent or 1,318 tpy (65 FR 44616, July 18, 2000). The NESHAP specifies numerical emission limits for organic HAP emissions from the coating application stations and associated curing ovens. The Surface Coating of Metal Coil NESHAP provides options for limiting organic HAP emissions to one of the four specified levels: (1) Use only individually compliant coatings with an organic HAP content that does not exceed 0.046 kg/liter of solids applied, (2) use coatings with an average organic HAP content of 0.046 kg/liter of solids on a rolling 12-month average, (3) use a capture system and add-on control device to either reduce emissions by 98 percent or use a 100-percent efficient capture system (permanent total enclosure (PTE)) and an oxidizer to reduce organic HAP emissions to no more than 20 parts per million by volume (ppmv) as carbon, or (4) use a combination of compliant coatings and control devices to maintain an average equivalent emission rate of organic HAP not exceeding 0.046 kg/liter of solids on a rolling 12-month average basis. These compliance options apply to an individual coil coating line, to multiple lines as a group, or to the entire affected source.

Compliant coatings must contain no organic HAP (each organic HAP that is not an Occupational Safety and Health Administration (OSHA)-defined carcinogen that is measured to be present at less than 1 percent by weight is counted as zero). The NESHAP also sets operating limits for the emission capture and add-on control devices.

C. What data collection activities were conducted to support this action?

For the risk modeling portion of these RTRs, the EPA used data from the 2011 and 2014 NEI. The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. The NEI includes data necessary for conducting risk modeling, including annual HAP emissions estimates from individual emission points at facilities and the related emissions release parameters. We used NEI emissions and supporting data as the primary data to develop the model input files for the risk assessments for each of these three source categories. Detailed information on the development of the modeling file for the Surface Coating of Metal Cans source category can be found in Appendix 1 to the *Residual Risk Assessment for the Surface Coating of Metal Cans Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* (hereafter referred to as the *Metal Cans Risk Assessment Report*), in the Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684). Detailed information on the development of the modeling file for the Surface Coating of Metal Coil source category can be found in Appendix 1 to the *Metal Coil Risk Assessment Report,* in the Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685).

For both the risk modeling and technology review portion of these RTRs, we also gathered data from facility construction and operating permits regarding emission points, air pollution control devices, and process operations. We collected permits and supporting documentation from state permitting authorities through state-maintained online databases. The facility permits were also used to confirm that the facilities were major sources of HAP and were subject to the NESHAP that are the subject of these risk assessments. In certain cases, we contacted industry associations and facility owners or operators to confirm and clarify the sources of emissions that were reported in the NEI. No formal information collection request (ICR) was conducted for this action.

For the technology review portion of these RTRs, we also used information from the EPA's ECHO database as a tool to identify which facilities were potentially subject to the NESHAP. The ECHO database provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. Using the search feature in ECHO, the EPA identified facilities that could potentially be subject to each of these two NESHAP. We then reviewed operating permits for these facilities, when available, to confirm that they were major sources of HAP with emission sources subject to these NESHAP.

Also for the technology reviews, we collected information from the reasonably available control technology (RACT), best available control technology (BACT), and lowest achievable emission rate (LAER) determinations in the EPA's RACT/BACT/LAER Clearinghouse (RBLC).[4] This is a database that contains case-specific information on air pollution technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, if a facility is planning new construction or a modification that will increase the air emissions by a large amount, an NSR permit must be obtained. This central database promotes the sharing of information among permitting agencies and aids in case-by-case determinations for NSR permits. We examined information contained in the RBLC to determine what technologies are currently used for these surface coating operations to reduce air emissions.

Additional information about these data collection activities for the technology reviews is contained in the technology review memoranda titled *Technology Review for Surface Coating Operations in the Metal Cans Category,* May 2017 (hereafter referred to as the *Metal Cans Technology Review Memo*), and the *Technology Review for Surface Coating Operations in the Metal Coil Category,* September 2017 (hereafter referred to as the *Metal Coil Technology Review Memo*), available in the respective Metal Cans and Metal Coil Dockets.

D. What other relevant background information and data are available?

We also reviewed the NESHAP for other surface coating source categories that were promulgated after the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP as part of the technology review for these source categories. We reviewed the regulatory requirements and/or technical analyses associated with these later regulatory actions to identify any practices, processes, and control technologies considered in those rulemakings that could be applied to emission sources in the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories, as well as the costs, non-air impacts, and energy implications associated with the use of those technologies. We also reviewed

[4] *https://www.epa.gov/catc/ractbactlaer-clearinghouse-rblc-basic-information.*

information available in the American Coatings Association's (ACA) *Industry Market Analysis,* 9th Edition (2014–2019).[5] The *ACA Industry Market Analysis* provided information on trends in coatings technology that can affect emissions from the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories. Additional details regarding our review of these information sources are contained in the *Metal Cans Technology Review Memo,* and the *Metal Coil Technology Review Memo,* available in the respective Metal Cans and Metal Coil Dockets.

III. Analytical Procedures and Decision Making

In this section, we describe the analyses performed to support the proposed decisions for the RTRs and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[6] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that: ''[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will 'protect the public health'.''

See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that the: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source categories under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the categories.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [7]

[5] Prepared for the ACA, Washington, DC, by The ChemQuest Group, Inc., Cincinnati, Ohio. 2015.

[6] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential exposure to the HAP to the level at or below which no adverse chronic non-cancer effects are expected; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

[7] Recommendations of the SAB Risk and Technology Review (RTR) Panel are provided in their report, which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) Conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed the NESHAP (*i.e.,* the 2003 Surface Coating of Metal Cans NESHAP; and the 2002 Surface Coating of Metal Coil NESHAP) we review a variety of data sources in our investigation of potential practices, processes, or controls that may have not been considered for each of the two source categories during development of the NESHAP. Among the sources we reviewed were the NESHAP for various industries that were promulgated after the MACT standards being reviewed in this action (*e.g.,* NESHAP for Miscellaneous Metal Parts and Products (40 CFR part 63, subpart MMMM)). We also reviewed the results of other technology reviews for other surface coating source categories since the promulgation of the NESHAP (*e.g.,* the technology reviews conducted for the Shipbuilding and Ship Repair (Surface Coating) NESHAP (40 CFR part 63, subpart II) and the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ)). We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could be applied to emission sources in the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-sponsored market analyses and trade journals, to research advancements in add-on controls and lower HAP technology for coatings and solvents. For a more detailed discussion of our methods for performing these technology reviews, refer to the *Metal Cans Technology Review Memo* and the *Metal Coil Technology Review Memo,* which are available in the respective Metal Cans and Metal Coil dockets.

C. How do we estimate post-MACT risk posed by these source categories?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessments in this action. The dockets for this rulemaking contain the following documents which provide more information on the risk assessment inputs and models: Metal Cans Risk Assessment Report and the Metal Coil Risk Assessment Report. The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009; [8] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

[8] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

1. How did we estimate actual emissions and identify the emissions release characteristics?

The actual emissions and the emission release characteristics for each facility were obtained primarily from either the 2011 NEI or the 2014 NEI. The 2011 version of the NEI was the most recent version available during the data collection phase of this rulemaking; therefore, most data were obtained from the 2011 NEI. The 2014 NEI was used to supplement the dataset with HAP data for emission units or processes for which the 2011 NEI included only volatile organic compounds (VOC) or particulate matter. In some cases, the industry association or the specific facilities were contacted to confirm emissions that appeared to be outliers, that were otherwise inconsistent with our understanding of the industry, or that were associated with high risk values in our initial risk screening analyses. When appropriate, emission values and release characteristics were revised based on these facility contacts, and these changes were documented. Additional information on the development of the modeling file for each source category, including the development of the actual emissions estimates and emissions release characteristics, can be found in Appendix 1 to the *Metal Cans Risk Assessment Report,* in the Metal Cans Docket and Appendix 1 to the *Metal Coil Risk Assessment Report,* in the Metal Coil Docket.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTRs (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

For both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories, the EPA calculated allowable emissions by developing source category-specific multipliers of 1.1 that was applied to the current emissions for each category to estimate the allowable emissions. The multipliers were based on information obtained from the facility operating permits and the add-on control device control efficiencies for metal can and metal coil coating operations. Both categories have facilities that employ the use of add-on controls with efficiencies that are slightly above the control efficiency level required by the respective NESHAP, which suggests that the actual emissions are slightly lower than the NESHAP allowable levels.

For more details on how the EPA estimated the MACT allowable emissions for the Surface Coating of Metal Cans source category, please see Appendix 1 to the *Metal Cans Risk Assessment Report,* in the Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684). For more details on how the EPA calculated the MACT allowable emissions for the Surface Coating of Metal Coil source category, please see Appendix 1 to the *Metal Coil Risk Assessment Report,* in the Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685).

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source categories addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[9] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[10] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the U.S. and Puerto Rico. A second library of U.S. Census Bureau census block[11] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source categories. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk

[9] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[10] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[11] A census block is the smallest geographic area for which census statistics are tabulated.

assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP [12] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. We use the peak hourly emission rate,[13] worst-case dispersion conditions, and, in accordance with our mandate under section 112 of the CAA, the point of highest off-site exposure to assess the potential risk to the maximally exposed individual.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [14] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[15] They are guideline levels for

[12] The EPA's 2005 Guidelines for Carcinogen Risk Assessment classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's Guidelines for Carcinogen Risk Assessment, published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled NATA—*Evaluating the National-scale Air Toxics Assessment 1996 Data—a SAB Advisory,* available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[13] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in the *Metal Cans Risk Assessment Report and the Metal Coil Risk Assessment Report* and in Appendix 5 of the report: Analysis of Data on Short-term Emission Rates Relative to Long-term Emission Rates. These documents are available in the Metal Cans Docket and the Metal Coil Docket.

[14] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants, which is available at http://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[15] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National

''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [16] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For these source categories, we did not have short term emissions data; therefore, we developed source category-specific factors based on information about each industry. We request comment on our assumptions regarding hour-to-hour variation in emissions and our methods of calculating the multiplier for estimating the peak 1-hour emissions for each source category and any additional information that could help refine our approach.

The Surface Coating of Metal Cans source category process is a continuous (non-batch) coating application and curing process that results in consistent emission rates. The sources in this category primarily roll-apply coatings onto the surface of the metal cans. The sources employ the use of various compliance options, which include the use of compliant coatings, coatings when averaged meet the emission limits, and for facilities that cannot use these options, they employ the use of add-on controls. We expect that the hourly variations in emissions from these processes during routine operations to be minimal. Thus, applying the default emission factor of 10 to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variations in emissions occur due to variations in the organic HAP content of the coatings. We calculated acute emissions by developing a source category-specific multiplier of 1.1 that was applied to the actual annual emissions, which were then divided by the total number of hours in a year (8,760 hours). A further discussion of why this factor was chosen can be found in Appendix 1 to the Metal Cans Risk Assessment Report in the Metal Cans Docket.

Similarly, for the Surface Coating of Metal Coil source category, we expect to see minimal hour-to-hour variation in emissions during routine operations because coil coating operations roll-apply coating onto a moving metal strip (coil) in a continuous coating process. The coil ends are seamed together in a continuous (non-batch) process that achieves a consistent emission rate. Thus, the default emission factor of 10 to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variation in emissions occur due to variations in the organic HAP content of the coatings from batch to batch. We calculated acute emissions by developing a source category-specific multiplier of 1.1 that was applied to the actual annual emissions, which were then divided by the total number of hours in a year (8,760 hours). A further discussion of why this factor was chosen can be found in Appendix 1 to the Metal Coil Risk Assessment Report in the Metal Coil Docket.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1 (even under the conservative assumptions of the screening assessment), and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we consider additional site-specific data to develop a more refined estimate of the potential for acute exposures of concern. For both source categories in this action, the data refinements employed consisted of plotting the HEM–3 polar grid results for each HAP with an acute HQ value greater than 1 on aerial photographs of the facilities. We then assessed whether the highest acute HQs were off-site and at locations that may be accessible to the public (*e.g.,* roadways and public buildings). These refinements are discussed more fully in the *Metal Cans* and *Metal Coil Risk Assessment Reports,* available in the respective Metal Cans and Metal Coil Dockets.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source categories emit any HAP known to be persistent and bioaccumulative in the environment (PB–HAP), as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, *at https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Surface Coating of Metal Cans source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further evaluation of multipathway risk was conducted for this source category. For the Surface Coating of Metal Coil source category, we identified PB–HAP emissions of lead, so we proceeded to the next step of the evaluation. In this

Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

[16] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

step, we determine whether the facility-specific emission rates of the emitted PB–HAP are large enough to create the potential for significant human health risk through ingestion exposure under reasonable worst-case conditions. To facilitate this step, we use previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and polycyclic organic matter (POM). Based on the EPA estimates of toxicity and bioaccumulation potential, the pollutants above represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/201308/documents/volume_1_reflibrary.pdf*). In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and USGS waterbody data. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates and data are available, we may conduct a Tier 3 screening assessment. If PB–HAP emission rates do not exceed a Tier 2 screening value of 1, we consider those PB–HAP emissions to pose risks below a level of concern.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume rise on chemical fate and transport. If the Tier 3 screening assessment indicates that risks above levels of concern cannot be ruled out, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standards (NAAQS) for lead.[17] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the Metal Coil Risk Assessment Report, which is available in the Metal Coil docket for this action.

5. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, (POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-

[17] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Metal Cans Risk Assessment Report* and the *Metal Coil Risk Assessment Report,* in the Metal Cans Docket and the Metal Coil Docket, respectively.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories emitted any of the environmental HAP. For the Surface Coating of Metal Cans source category, we identified emissions of HCl and HF. For the Surface Coating of Metal Coil source category, we identified emissions of HF and lead.

Because one or more of the environmental HAP evaluated are emitted by at least one facility in the source categories, we proceeded to the second step of the evaluation for both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP: Arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the Metal Cans Risk Assessment Report and Metal Coil Risk Assessment Report, which are available in each respective docket for this action.

6. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For these source categories, we conducted the facility-wide assessment using a dataset compiled from the 2014 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble: ''What data collection activities were conducted to support this action?'' Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility.

The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source categories addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Metal Cans Risk Assessment Report* and the *Metal Coil Risk Assessment Report,* available respectively in the Metal Cans Docket and the Metal Coil Docket, provide the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions datasets, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Metal Cans Risk Assessment Report* and the *Metal Coil Risk Assessment Report,* available respectively in the Metal Cans Docket and the Metal Coil Docket. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Datasets

Although the development of the RTR emissions datasets involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* pages 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[18] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[19] Chronic noncancer RfC and

[18] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[19] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible,

reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[20] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of humans at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during this same time period. For these source categories, these assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[21]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous the EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental

and which is based on maximum likelihood estimates.

[20] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

[21] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What are the analytical results and proposed decisions for the Surface Coating of Metal Cans source category?

1. What are the results of the risk assessment and analyses?

As described in section III of this preamble, for the Surface Coating of Metal Cans source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Metal Cans Risk Assessment Report* in the Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684).

a. Inhalation Risk Assessment Results

Table 2 of this preamble summarizes the results of the inhalation risk assessment for the source category. As discussed in section III.C.2 of this preamble, we set MACT-allowable HAP emission levels at metal can coating facilities equal to 1.1 times actual emissions. For more detail about the MACT-allowable emission levels, see Appendix 1 to the *Metal Cans Risk Assessment Report* in the Metal Cans Docket.

TABLE 2—SURFACE COATING OF METAL CANS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	3	3	700	800	0.0009	0.001	0.02	0.02	HQREL = 0.4.
Whole Facility	8	.....	1,500	.....	0.002	.....	0.2	.....	

[1] The TOSHI is the sum of the chronic noncancer HQs for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 3-in-1 million (driven by formaldehyde from a two-piece can coating line), the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.02 (driven by formaldehyde from a two-piece can coating line), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 0.4 (driven by formaldehyde). The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.0009 excess

cancer cases per year or 1 case in every 1,100 years.

b. Acute Risk Results

Table 2 of this preamble shows the acute risk results for the Surface Coating of Metal Cans source category. The screening analysis for acute impacts was based on an industry specific multiplier of 1.1, to estimate the peak emission rates from the average rates. For more detailed acute risk results, refer to the *Metal Cans Risk Assessment Report* in the Metal Cans Docket.

c. Multipathway Risk Screening Results

There are no PB–HAP emitted by facilities in the Surface Coating of Metal Cans source category. Therefore, we do not expect any human health multipathway risks as a result of emissions from this source category.

d. Environmental Risk Screening Results

The emissions data for the Surface Coating of Metal Cans source category indicate that two environmental HAP are emitted by sources within this source category: HCl and HF. Therefore, we conducted a screening-level evaluation of the potential for adverse environmental risks associated with emissions of HCl and HF for the Surface Coating of Metal Cans source category. For both HCl and HF, each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

Three facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 8-in-1 million, driven by formaldehyde from miscellaneous industrial processes (other/not classified) and acetaldehyde from beer production (brew kettle). The total estimated cancer incidence from the whole facility is 0.002 excess cancer cases per year, or one excess case in every 500 years. Approximately 1,500 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at three of the five facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be less than 1, mainly driven by emissions of acetaldehyde from beer production (brew kettle primarily) and formaldehyde from miscellaneous industrial processes (other/not classified).

f. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the Surface Coating of Metal Cans source category across different demographic groups within the populations living near facilities.[22]

The results of the demographic analysis are summarized in Table 3 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—SURFACE COATING OF METAL CANS SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to Surface Coating of Metal Cans	Population with chronic hazard index above 1 due to Surface Coating of Metal Cans
Total Population	317,746,049	700	0
Race by Percent			
White	62	92	0
All Other Races	38	8	0
Race by Percent			
White	62	92	0
African American	12	0	0
Native American	0.8	0	0
Hispanic or Latino	18	4	0
Other and Multiracial	7	4	0
Income by Percent			
Below the Poverty Level	14	4	0
Above the Poverty Level	86	96	0
Education by Percent			
Over 25 and Without High a School Diploma	14	4	0
Over 25 and With a High School Diploma	86	96	0

The results of the Surface Coating of Metal Cans source category demographic analysis indicate that emissions from the source category expose approximately 700 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer TOSHI greater than 1 (we note that many of those in the first risk group are

[22] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living above the poverty level, and linguistically isolated people.

the same as those in the second). None of the percentages of the at-risk populations are higher than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations,* May 2018 (hereafter referred to as the *Metal Cans Demographic Analysis Report*) in the Metal Cans Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Surface Coating of Metal Cans source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 3-in-1 million due to actual emissions or based on allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.0009 cases per year for actual emissions and 0.001 cases per year for allowable emissions) and we did not identify potential for adverse chronic noncancer health effects. The acute noncancer risks based on actual emissions are low at an HQ of 0.4 for formaldehyde. Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose to find that the risks from the Surface Coating of Metal Cans source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Surface Coating of Metal Cans source category are acceptable, risk estimates for approximately 700 individuals in the exposed population are above 1-in-1 million at the actual emissions level and 800 individuals at the allowable emissions level. Consequently, we further considered whether the MACT standards for the Surface Coating of Metal Cans source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Metal Cans source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Metal Cans NESHAP.

The only development identified in the technology review for can coating is the ongoing development and the potential future conversion from conventional interior can coatings that contain bisphenol A (BPA) to interior coatings that do not intentionally contain BPA (BPA–NI). Since BPA and BPA–NI are not HAP, this change would have no effect on the HAP emissions. There were no other technological developments identified that affect HAP emissions for the Surface Coating of Metal Cans source category. Therefore, we are proposing that additional emission controls for this source category are not necessary to provide an ample margin of safety.

c. Environmental Effects

The emissions data for the Surface Coating of Metal Cans source category indicate that two environmental HAP are emitted by sources within this source category: HCl and HF. The screening-level evaluation of the potential for adverse environmental risks associated with emissions of HCl and HF from the Surface Coating of Metal Cans source category indicated that each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. In addition, we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category, and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Metal Cans source category. The EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Metal Cans NESHAP to support the technology review. The information sources included the following: The RBLC; state regulations, facility operating permits, regulatory actions (including technology reviews promulgated for other surface coating NESHAP subsequent to the Surface Coating of Metal Cans NESHAP); a site visit and discussions with individual can coating facilities and the industry trade association. The primary emission sources for the technology review included the following: The coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

Based on our review, we did not identify any add-on control technologies, process equipment, work practices, or procedures that had not been previously considered during development of the Surface Coating of Metal Cans NESHAP, and we did not identify any new or improved add-on control technologies that would result in additional emission reductions. A brief summary of the EPA's findings in conducting the technology review of can coating operations follows. For a detailed discussion of the EPA's findings, refer to the Metal Cans Technology Review Memorandum in the Metal Cans Docket.

During the 2003 MACT development for the Surface Coating of Metal Cans NESHAP, numerical emission limits were determined for each coating type segment within the four subcategories for a total of 12 HAP emission limits. The emission limits were based on industry survey responses and the

industry's use of low- or no-HAP coatings and thinners and add-on capture and control technologies. Alternately, the NESHAP provides sources with the option of limiting HAP emissions with capture and add-on control to achieve an overall control efficiency (OCE) of 97 percent for new or reconstructed sources and 95 percent for existing sources. Alternately, sources with add-on controls can choose the option of meeting a HAP concentration limit of 20 ppm by volume dry at the control device outlet. During development of that rulemaking, we identified the beyond-the-floor option to require the use of capture systems and add-on control devices for all metal can surface coating operations. This option was rejected because we determined the additional emission reductions achieved using the beyond-the-floor option did not warrant the costs each affected source would incur (68 FR 2123).

For this technology review, we used the EPA's NEI and the ECHO databases to identify facilities that are currently subject to the Surface Coating of Metal Cans NESHAP. The facility list was also reviewed by the Can Manufacturers Institute (CMI). CMI provided facility operating permits to confirm that only five facilities are currently operating as major sources and are subject to the Surface Coating of Metal Cans NESHAP.

Our search of the RBLC database for improvements in can coating technologies provided results for four metal can coating facilities with permit dates of 2006 or later. All four of the results contained information about the add-on controls used by the facilities. Two facilities reported the use of regenerative thermal oxidizers (RTOs), one reported the use of an induction heater and catalytic oxidation, and one reported the use of thermal oxidation. All of these control technologies were in use by the can coating industry during development of the Surface Coating of Metal Cans NESHAP and were already considered in the development of the Surface Coating of Metal Cans NESHAP. Therefore, we concluded that the results of the search are consistent with current Surface Coating of Metal Cans NESHAP requirements and did not include any improvements in add-on control technology or other equipment that were not identified and considered at that time.

We also conducted a review of the state operating permits for the can coating facilities that are subject to the Surface Coating of Metal Cans NESHAP to determine whether any are using technologies that exceed the MACT level of control or are using technologies that were not considered during the development of the original NESHAP. The permits show that two of the five facilities use no add-on controls (they use the compliant material option or the material averaging option to meet the NESHAP emission limits) and three of the five facilities had only partial control (*i.e.,* not all can coating lines had control). The coating types are not specified in the permits for all facilities, but one permit specified the use of ultraviolet (UV)-cured coatings. The add-on controls in the permits included a thermal oxidizer and two regenerative thermal oxidizers. As a result of the permit review, we concluded that the add-on controls that are now available are essentially the same and have the same emission reduction performance (*i.e.,* 95- or 97-percent VOC destruction efficiency) as those that were available when the NESHAP was proposed and promulgated.

We reviewed other surface coating NESHAP promulgated after the Surface Coating of Metal Cans NESHAP to determine whether any requirements exceed the Surface Coating of Metal Cans MACT level of control or included technologies that were not considered during the development of the original Surface Coating of Metal Cans NESHAP. These NESHAP include Surface Coating of Miscellaneous Metal Parts and Products (40 CFR part 63, subpart MMMM), Surface Coating of Plastic Parts and Products (40 CFR part 63, subpart PPPP), and Surface Coating of Automobiles and Light-Duty Trucks (40 CFR part 63, subpart IIII). We also reviewed the results of the technology reviews for the following NESHAP: Printing and Publishing (40 CFR part 63, subpart KK), Shipbuilding and Ship Repair (40 CFR part 63, subpart II), and Wood Furniture Manufacturing (40 CFR part 63, subpart JJ).

Technology reviews for these NESHAP identified PTE and/or RTO as improvements in add-on control technology. Because the Surface Coating of Metal Cans NESHAP already includes a compliance option involving the use of a PTE and an add-on control device, and because these measures were considered in the development of the original Surface Coating of Metal Cans NESHAP, we concluded that these measures do not represent an improvement in control technology under CAA section 112(d)(6).

The technology review conducted for the Wood Furniture Manufacturing NESHAP identified the use of more efficient spray guns as a technology review development and revised the requirements to prohibit the use of conventional spray guns. Air-assisted airless spraying was added as a more efficient coating application technology. This development is not applicable to metal can coating because the primary coating operations are performed using non-spray application methods, such as lithographic printing and other types of direct transfer coating application, or they already use airless spray equipment for the inside spray, side seam spray, and repair coating operations. In conclusion, we found no improvements in add-on control technology or other equipment during review of the RBLC, the state operating permits, and subsequent NESHAP that were not already identified and considered during the Surface Coating of Metal Cans NESHAP development.

Alternatives to conventional solvent-borne coatings were identified and considered during MACT development but were not considered to be suitable for all can coating applications. These alternative coatings include higher solids coatings, waterborne coatings, and low-energy electron beam/ultraviolet cured coatings. Powder coating applications are not common for metal containers. Waterborne and higher solids coatings with lower HAP and VOC content were considered in the development of the proposed and final standards and are reflected in the HAP emission limitations in the final rule. Interior coatings used for cans that contain food or beverages are subject to regulation by the U.S. Food and Drug Administration (FDA), as well as internal approval by the food and beverage manufacturers. The only anticipated technology change in the area of coating reformulation for the Surface Coating of Metal Cans source category is the replacement of coatings that have no intentionally added BPA for both beverage and food cans, referred to as BPA–NI coatings. The major can coating producers are currently devoting much of their research and development efforts to develop BPA–NI systems for new applications and to improve the BPA–NI systems that already exist. However, a complete shift to these coatings is not expected unless driven by FDA regulation or consumer opinion. Therefore, the EPA did not identify any developments in coating technology or other process changes or pollution prevention alternatives that would represent a development relative to the coating technologies on which the final rule is based.

Finally, no improvements in work practices or operational procedures were identified for the Surface Coating of Metal Cans source category that were not previously identified and considered during MACT development.

The current MACT standards require that, if a facility uses add-on controls to comply with the emission limitations, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, those coating operations. If a facility is not using add-on controls and is using either the compliant material option or the emission rate without add on controls option, the facility does not need to comply with work practice standards. Under the emission rate option, HAP emitted from spills or from containers would be counted against the facility in the compliance calculations, so facilities must already minimize these losses to maintain compliance.

Based on these findings, we conclude that there have not been any developments in add-on control technology or other equipment not identified and considered during MACT development, nor any improvements in add-on controls, nor any significant changes in the cost (including cost effectiveness) of the add-on controls. Therefore, we are proposing no revisions to the Surface Coating of Metal Cans NESHAP pursuant to CAA section 112(d)(6). For further discussion of the technology review results, refer to the Metal Cans Technology Review Memorandum in the Metal Cans Docket.

4. What other actions are we proposing for the Surface Coating of Metal Cans source category?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP. We are proposing to require electronic submittal of notifications, semiannual reports, and compliance reports (which include performance test reports) for metal cans surface coating facilities. In addition, we are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also propose other changes, including updating references to equivalent test methods, making technical and editorial revisions, and incorporation by reference (IBR) of alternative test methods. Our analyses and proposed changes related to these issues are discussed in the sections below.

a. Electronic Reporting Requirements

In this action the EPA proposes to require owners and operators of surface coating of metal can facilities to submit electronic copies of the initial notifications required in 40 CFR 63.9(b) and 63.3510(b), notifications of compliance status required in 40 CFR 63.9(h) and 63.3510(c), performance test reports required in 40 CFR 63.3511(b), and semiannual reports required in 40 CFR 63.3511(a), through the EPA's Central Data Exchange (CDX), using the Compliance and Emissions Data Reporting Interface (CEDRI).[23] A description of the electronic submission process is provided in the memorandum Electronic Reporting Requirements *for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP),* August 8, 2018, in the Metal Cans Docket. This proposed rule requirement would replace the current rule requirement to submit the notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. This proposed rule requirement does not affect submittals required by state air agencies as required by 40 CFR 63.13.

For the performance test reports required in 40 CFR 63.3511(b), results collected using test methods that are supported by the Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www3.epa.gov/ttn/chief/ert/ert_info.pdf*) at the time of the performance test are required to be submitted in the format generated through the use of ERT. Performance test results collected using test methods that are not supported by the ERT at the time of the performance test are required to be submitted to the EPA electronically in a portable document format (PDF) using the attachment module of the ERT. Note that all but two of the EPA test methods (EPA Method 25 and optional EPA Method 18) listed under the emissions destruction or removal efficiency section of 40 CFR part 63, subpart KKKK, are currently supported by the ERT. As mentioned above, the rule proposes that, should an owner or operator use EPA Method 25 or EPA Method 18, then its results would be submitted in PDF using the attachment module of the ERT.

For the semiannual reports required in 40 CFR 63.3511(a), the EPA proposes that owners and operators use the final semiannual report template, which will reside in CEDRI, one year after finalizing this proposed action. The *Proposed Electronic Reporting Template for Surface Coating of Metal Cans Subpart KKKK Semiannual Report* is available for review and comment in the Metal Cans Docket as part of this action. We specifically request comment on the format and usability of the template (*e.g.,* filling out and uploading a provided spreadsheet versus entering the required information into an on-line fillable CEDRI web form), as well as the content, layout, and overall design of the template. Prior to availability of the final semiannual compliance report template in CEDRI, owners and operators of affected sources will be required to submit semiannual compliance reports as currently required by the rule. When the EPA finalizes the semiannual compliance report template, metal can sources will be notified about its availability via the CEDRI website. We plan to finalize a required reporting format with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic template has been available for at least 1 year.

For the electronic submittal of initial notifications required in 40 CFR 63.9(b), no specific form is available at this time, so these notifications are required to be submitted electronically in PDF. If electronic forms are developed for these notifications, we will notify sources about their availability via the CEDRI website. For the electronic submittal of notifications of compliance status reports required in 40 CFR 63.9(h), the final semiannual report template discussed above, which will reside in CEDRI, will also contain the information required for the notifications of compliance status report and will satisfy the requirement to provide the notifications of compliance status information electronically, eliminating the need to provide a separate notifications of compliance status report. As stated above, the final semiannual report template will be available after finalizing this proposed action and sources will be required to use the form after one year. Prior to the availability of the final semiannual compliance report template in CEDRI, owners and operators of affected sources will be required to submit semiannual compliance reports as currently required by the rule. As stated above, we will notify sources about the availability of the final semiannual report template via the CEDRI website.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing

[23] *https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri.*

additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In 40 CFR 63.3511(f), we propose to address the situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. Also in 40 CFR 63.3511(g), we propose to address the situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule. Examples of such events are acts of nature, acts of war or terrorism, and equipment failures or safety hazards that are beyond the control of the facility.

As discussed in the memorandum Electronic Reporting Requirements *for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP), August 8, 2018,* electronic submittal of the reports addressed in this proposed action will increase the usefulness of the data contained in those reports, and in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated facilities. Electronic submittal will also improve compliance by facilitating the ability of regulated facilities to demonstrate compliance and the ability of air agencies and the EPA to assess and determine compliance. Moreover, electronic reporting is consistent with the EPA's plan [24] to implement Executive Order 13563 and the EPA's agency-wide policy [25] developed in response to the White House's Digital Government Strategy.[26] For more information on the benefits of electronic reporting, see the memorandum Electronic Reporting Requirements *for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP),* August 8, 2018, available in the Metal Cans docket.

b. SSM Requirements

1. Proposed Elimination of the SSM Exemption

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 5 to Subpart KKKK of Part 63 (*Applicability of General Provisions to Subpart KKKK,* hereafter referred to as the ''General Provisions table to subpart KKKK''), as explained in more detail below in section IV.A.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. Further, we are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below. The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are seeking comment on the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods. Startups and shutdowns are part of normal operations for the Surface Coating of Metal Cans source category. As currently specified in 40 CFR 63.3492(b), any coating operation(s) for which you use the emission rate with add-on controls option must meet operating limits ''at all times,'' except for solvent recovery systems for which you conduct liquid-liquid material balances according to 40 CFR 63.3541(i). (Solvent recovery systems for which you conduct a liquid-liquid material balance require a monthly calculation of the solvent recovery device's collection and recovery efficiency for volatile organic matter.) Also, as currently specified in 40 CFR 63.3500(a)(2), any coating operation(s) for which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option must be in compliance ''at all times'' with the emission limits in 40 CFR 63.3490 and work practice standards in 40 CFR 63.3493. During startup and shutdown periods, in order for a facility (using add-on controls to meet the standards) to meet the emission and operating standards, the control device for a coating operation needs to be turned on and operating at specified levels before the facility begins coating operations, and the control equipment needs to continue to be operated until after the facility ceases coating operations. In some cases, the facility needs to run thermal oxidizers on supplemental fuel before VOC levels are sufficient for the combustion to be (nearly) self-sustaining. Note that we are also proposing new related language in 40 CFR 63.3500(b) to require that the owner or operator operate and maintain the coating operation, including pollution control equipment, at all times to minimize emissions. See section IV.A.4.b.2 of this preamble for further discussion of this proposed revision.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for

[24] *Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations,* August 2011. Available at *https://www.regulations.gov, Document ID No. EPA–HQ–OA–2011–0156–0154.*

[25] *E-Reporting Policy Statement for EPA Regulations,* September 2013, *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[26] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at *http://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digitalgovernment-strategy/pdf.*

existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.'') As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' '') See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector Risk and Technology Review, the EPA established a work practice standard for unique types of malfunctions that result in releases from pressure relief devices or emergency flaring events because we had information to determine that such work practices reflected the level of control that applies to the best performing sources (80 FR 75178, 75211–14, December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

It is unlikely that a malfunction would result in a violation of the standards during metal can surface coating operations for facilities using the compliant material option or the emission rate without add-on controls option. Facilities using the compliant material option have demonstrated that the organic HAP content of each coating is less than or equal to the applicable emission limit and that each thinner used contains no organic HAP. Facilities using the emission rate without add-on controls option have demonstrated that the coatings and thinners used in the coating operations are less than or equal to the applicable emission limit calculated as a rolling 12-month emission rate and determined on a monthly basis.

A malfunction event is more likely for metal can coating facilities that use the emission rate with add-on control options or the control efficiency/outlet concentration compliance option. For these options, facilities must demonstrate a reduction of total HAP of at least 97 or 95 percent or that the oxidizer outlet HAP concentration is no greater than 20 ppmv and 100-percent capture efficiency. For this option, facilities must demonstrate that their emission capture systems and add-on control devices meet the operating limits established by the Surface Coating of Metal Cans NESHAP. The capture and control device operating limits are listed in Table 4 of the Surface Coating of Metal Cans NESHAP and must be achieved continuously. Most are based on maintaining an average temperature over a 3-hour block period, which must not fall below the temperature limit established during the facility's initial performance test. In addition, work practices are also required when using this option to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s), but it is unlikely that a malfunction would result in a violation of the work practice standards.

We currently have no information to suggest that it is feasible or necessary to establish any type of standard for malfunctions associated with the Surface Coating of Metal Cans source category. We encourage commenters to provide any such information, if available.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA will determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess

emissions. The EPA will also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused, in part, by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

2. Proposed Revisions to the General Provisions Applicability Table

a. 40 CFR 63.3500(b) General Duty

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.3500(b) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.3500(b) does not include that language from 40 CFR 63.6(e)(1)(i).

We are also proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.3500(b).

b. SSM Plan

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart KKKK, the current provisions requiring the SSM plan at 40 CFR 63.3511(c). As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance, and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the General Provisions table to subpart KKKK (table 5) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise the standards in this rule to apply at all times.

We are also proposing to remove rule text in 40 CFR 63.3541(h) clarifying that, in calculating emissions to demonstrate compliance, deviation periods must include deviations during an SSM period. Since the EPA is removing the SSM exemption, this clarifying text is no longer needed.

d. 40 CFR 63.4164 Performance Testing

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.3543 and 40 CFR 63.3553. The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions will also not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language clarifying that the owner or operator must make such records available to the Administrator upon request.

e. Monitoring

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.8(c)(1) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in 40 CFR 63.8(c)(1) are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). Further, we have determined that 40 CFR 63.8(c)(1)(ii) is redundant to the current monitoring requirement in 40 CFR 63.3547(a)(4) and 40 CFR 63.3557(a)(4) (*i.e.,* ''have available necessary parts for routine repairs of the monitoring equipment''), except 40 CFR 63.8(c)(1)(ii) specifies ''have readily available.'' We are proposing to revise 40 CFR 63.3547(a)(4) and 63.3557(a)(4) to specify ''readily available.''

f. 40 CFR 63.3512 Recordkeeping

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable

to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.3512(i), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.3512(i) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.3512(i) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' For this reason, the EPA is proposing to add to 40 CFR 63.3512(i) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.10(b)(2)(iv)–(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement in 40 CFR 63.10(b)(2)(iv) is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.3512(i)(4). When applicable, the provision in Section 63.10(b)(2)(v) requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.10(b)(2)(vi) by changing the ''yes'' in column 3 to a ''no.'' The provision requires sources to maintain records during continuous monitoring system (CMS) malfunctions. Section 63.3512(i) covers records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

We are proposing to remove the requirement in 40 CFR 63.3512(j)(1) that deviation records specify whether deviations from a standard occurred during a period of SSM. This revision is being proposed due to the proposed removal of the SSM exemption and because, as discussed above in this section, we are proposing that deviation records must specify the cause of each deviation, which could include a malfunction period as a cause. We are also proposing to remove the requirement to report the SSM records in 40 CFR 63.6(e)(3)(iii) through (v) by deleting 40 CFR 63.3512(j)(2).

g. 40 CFR 63.3511 Reporting

We are proposing to revise the General Provisions table to subpart KKKK (Table 5) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.3511(a)(7) and (8). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. Subpart KKKK of 40 CFR part 63 currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from the standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' to ''date, time, and duration'' (see proposed revisions to 40 CFR 63.3511(a)(5)(i); 40 CFR 63.3511(a)(7)(vi), (a)(7)(vii), and (a)(7)(viii); 40 CFR 63.3511(a)(8)(v), (a)(8)(vi), and (a)(8)(xi)(A)) to use terminology consistent with the recordkeeping section. Further, we are proposing that the report must also contain the number of deviations from the standard, and a list of the affected source or equipment. For deviation reports addressing deviations from an applicable emission limit in 40 CFR 63.3490 or operating limit in Table 4 to 40 CFR part 63 subpart KKKK, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. For deviation reports addressing deviations from work practice standards associated with the emission rate with add-on controls option (40 CFR 63.3511(a)(8)(xiii)), we are retaining the current requirement (including reporting actions taken to correct the deviation), except that we are revising the rule language to reference the new general duty requirement in 40 CFR 63.3500(b), we are clarifying that the description of the deviation must include a list of the affected sources or equipment and the cause of the deviation, we are clarifying that ''time period'' includes the ''time and duration,'' and we are requiring that the report include the number of deviations from the work practice standards in the reporting period.

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant

emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing this requirement to ensure that the EPA has adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate 40 CFR 63.3511(c) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross reference to 40 CFR 63.10(d)(5)(ii) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We are proposing to remove the requirements in 40 CFR 63.3511(a)(7) and (a)(8) that deviation reports must specify whether deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.3511(a)(7)(x) and 40 CFR 63.3511(a)(8)(viii) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble.

c. Technical Amendments to the Surface Coating of Metal Cans NESHAP

We propose to amend 40 CFR 63.3481(c)(5) to revise the reference to ''future subpart MMMM'' of this part by removing the word ''future'' because subpart MMMM was promulgated in 2004.

We propose to revise the format of references to test methods in 40 CFR part 60. The current reference in 40 CFR 63.3545(a) and (b) to Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of part 60. Appendix A of part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

We propose to amend 40 CFR 63.3521(a)(1)(i) and (4), which describe how to demonstrate initial compliance with the emission limitations using the compliant material option, to remove references to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) is intended to specify which compounds must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We are proposing to remove this reference because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We are proposing to replace these references to OSHA-defined carcinogens and 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 8 to 40 CFR part 63, subpart KKKK) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass.

We propose to include organic HAP in proposed Table 8 to 40 CFR part 63, subpart KKKK if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[27] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We propose to revise the monitoring provisions for thermal and catalytic oxidizers to clarify that a thermocouple is part of the temperature sensor referred to in 40 CFR 63.3547(c)(3) and 40 CFR 63.3557(c)(3) for purposes of performing periodic calibration and verification checks.

Current 40 CFR 63.3513(a) allows records, ''where appropriate,'' to be maintained as ''electronic spreadsheets'' or a ''database.'' We propose to add clarification to this provision that the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

d. Ongoing Emissions Compliance Demonstrations Requirement

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the Surface Coating of Metal Cans NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require ongoing periodic performance testing for these emission capture systems and add-on controls. We are proposing periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing and ongoing parametric monitoring to ensure ongoing compliance with the standards.

Although ongoing monitoring of operating parameters is required by the NESHAP, as the control device ages over time, the destruction efficiency of the control device can be compromised due to various factors. The EPA published several documents that identify potential control device operational problems that could decrease control device efficiency.[28]

[27] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[28] See *Control Techniques for Volatile Organic Compound Emissions from Stationary Sources,* EPA/453/R–92–018, December 1992, *Control Technologies for Emissions from Stationary Sources,* EPA/625/6–91/014, June 1991, *and Survey of Control for Low Concentration Organic Vapor Gas Streams,* EPA–456/R–95–003, May 1995. These

Continued

These factors are discussed in more detail in the memorandum titled *Proposed Periodic Testing Requirement* dated February 1, 2019, included in the Metal Cans and Metal Coil Dockets.

The Institute of Clean Air Companies (ICAC), an industry trade group currently representing 50 emission control device equipment manufacturers, corroborated the fact that control equipment degrades over time in their comments in a prior rulemaking. In their comments on proposed revisions to the NESHAP General Provisions (72 FR 69, January 3, 2007), ICAC stated that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology remains effective.[29] ICAC identifies both thermal and catalytic oxidizers as effective add-on control devices for VOC reduction and destruction. Thermal oxidizers, in which ''. . . organic compounds are converted into carbon dioxide and water . . .'' allow ''. . . for the destruction of VOCs and HAP up to levels greater than 99-percent . . .'' once ''. . . [t]he oxidation reaction . . .'' begins, typically ''. . . in the 1450 °F range.'' That temperature may need to be elevated, depending on the organic compound to be destroyed. Along with that destruction, ''. . . extreme heat, the corrosive nature of chemical-laden air, exposure to weather, and the wear and tear of non-stop use . . .'' affect thermal oxidizers such that ''. . . left unchecked, the corrosive nature of the gases treated will create equipment downtime, loss of operational efficiency, and eventually failure of the thermal oxidizer.'' While catalytic oxidizers operate at lower operating temperatures—typically 440 to 750 °F—than thermal oxidizers, catalytic oxidizers also provide VOC reduction and destruction. In general, the catalyst ''. . . needs to be checked periodically to verify the activity of the catalyst . . .'' because that ''. . . activity or overall ability of the catalyst to convert target emissions to other by-products will naturally diminish over time.'' ICAC also mentions chemical poisoning (deactivation of the catalyst by certain compounds) or masking of the catalyst bed, which may occur due to changes in manufacturing processes, as means of catalyst degradation. Finally, ICAC identifies electrical and mechanical component maintenance as important, for if such components are not operating properly, ''. . . the combustion temperature in the . . . oxidizer could drop below the required levels and hazardous air pollutant (HAP) destruction may not be achieved . . .'' ICAC closes by noting ''. . . it costs more money to operate an oxidizer at peak performance, and if not maintained, performance will deteriorate yielding less destruction of HAP.''

State websites also provide on-line CAA violations and enforcement actions that include performance issues associated with control devices. A recent search resulted in identification of sources in Ohio and Massachusetts that did not achieve compliance even though they maintained the thermal oxidizer operating temperatures established during previous performance tests, which further corroborates with the ICAC comments and conclusions regarding control device degradation.

Based on the need for vigilance in maintaining equipment to stem degradation, we are proposing periodic testing of add-on control devices once every 5 years, in addition to the one-time initial emissions and capture efficiency testing and ongoing temperature measurement to ensure ongoing compliance with the standards.

In this action, we are proposing to require periodic performance testing of add-on control devices on a regular frequency (*e.g.,* every 5 years) to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. We note that two of the state operating permits for metal can coating existing sources already require such testing every 5 years synchronized with 40 CFR part 70 air operating permit renewals. This proposed periodic testing requirement includes an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control option at 40 CFR 63.3546(b) and following the catalyst maintenance procedures in 40 CFR 63.3546(b)(4). This exception is due to the catalyst maintenance procedures that already require annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test.

The proposed periodic performance testing requirement allows an exception from periodic testing for facilities using instruments to continuously measure emissions. Such continuous emissions monitoring systems (CEMS) would show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

This proposed requirement does not require periodic testing or CEMS monitoring of facilities using the compliant materials option or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement requires facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would conduct periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule and not be required to move up the date of the next test to the 3-year date specified above. This proposed requirement would require periodic air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. The emissions would be measured as total gaseous organic mass emissions as carbon using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost associated with this proposed requirement, which includes a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A, would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Draft Costs/Impacts of the 40 CFR part 63 Subparts KKKK and SSSS Monitoring Review Revisions,* in the Metal Cans and Metal Coil Dockets. We have reviewed the

documents are included in the Metal Can and Metal Coil Dockets for this action.

[29] See Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *www.regulations.gov*. A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Metal Cans and Metal Coil Dockets for this action.

state operating permits for facilities subject to the Surface Coating of Metal Cans NESHAP and found that one of the metal can coating facilities employs three add-on control devices that are currently not required to conduct periodic testing as a condition of their permit renewal. Two other facilities using add-on controls are currently required to conduct periodic performance tests as a condition of their 40 CFR part 70 operating permits. For these two facilities, the periodic testing would not add any new testing requirements and the estimated costs would not apply to these facilities. Periodic performance tests ensure that any control systems used to comply with the NESHAP in the future would be properly maintained over time, thereby reducing the potential for acute emissions episodes and non-compliance.

e. IBR of Alternative Test Methods Under 1 CFR Part 51

The EPA is proposing new and updated test methods for the Surface Coating of Metal Cans NESHAP that include IBR. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following voluntary consensus standards (VCS) described in the amendments to 40 CFR 63.14:

- ASTM Method D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.3521(c) and 63.3531(c);
- ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.3521(c) and 63.3531(c);
- ASTM D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.3521(a)(2) and 63.3541(i)(3);
- ASTM D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.3521(b)(1); and
- ASTM D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.3521(b)(1).

Older versions of ASTM Methods, D2697 and D6093 were incorporated by reference when the Surface Coating of Metal Cans NESHAP was originally promulgated (68 FR 64432, November 13, 2003). We are proposing to replace the older versions of these methods and ASTM Method D1475 with updated versions, which requires IBR revisions. The updated version of the method replaces the older version in the same paragraph of the rule text. We are also proposing the addition of ASTM Methods D2111 and D2369 to the Surface Coating of Metal Cans NESHAP for the first time by incorporating these methods by reference in this rulemaking. Refer to section VIII.J of this preamble for further discussion of these VCS.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources must comply with all of the amendments, with the exception of the proposed electronic format for submitting semiannual compliance reports, no later than 181 days after the effective date of the final rule, or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart KKKK until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing one change that would impact ongoing compliance requirements for 40 CFR part 63, subpart KKKK. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically. We are proposing that the semiannual compliance report be submitted electronically using a new template, which is available for review and comment as part of this action. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days, is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is proposing that existing affected sources be in compliance with all of this regulation's revised requirements within 181 days of the regulation's effective date.

We solicit comment on these proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

B. What are the analytical results and proposed decisions for the Surface Coating of Metal Coil source category?

1. What are the results of the risk assessment and analyses?

As described above in section III of this preamble, for the Surface Coating of Metal Coil source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Metal Coil Risk Assessment Report* in the Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685).

a. Inhalation Risk Assessment Results

Table 4 of this preamble summarizes the results of the inhalation risk assessment for the source category. As discussed in section III.C.2 of this preamble, we determined that MACT-allowable HAP emission levels at coil coating facilities are equal to 1.1 times the actual emissions. For more detail about the MACT-allowable emission levels, see Appendix 1 to the *Metal Coil Risk Assessment Report* in the Metal Coil Docket.

TABLE 4—SURFACE COATING OF METAL COIL SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	10	10	19,000	24,000	0.005	0.006	0.1	0.1	HQREL = 3.
Whole Facility	40		270,000		0.03		5		

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 4 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 10-in-1 million (driven by naphthalene from solvent storage), the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.1 (driven by glycol ethers from prime and finish coating application), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 3 (driven by DGME). The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.005 excess cancer cases per year or one case in every 200 years.

b. Acute Risk Results

Table 4 of this preamble also shows the acute risk results for the Surface Coating of Metal Coil source category. The screening analysis for acute impacts was based on an industry-specific multiplier of 1.1, to estimate the peak emission rates from the average emission rates. For more detailed acute risk results refer to the *Metal Coil Risk Assessment Report* in the Metal Coil Docket.

c. Multipathway Risk Screening Results

The emissions data for the Surface Coating of Metal Coil source category indicate that one PB–HAP is emitted by sources within this source category: Lead. In evaluating the potential for multipathway effects from emissions of lead, modeled maximum annual lead concentrations were compared to the NAAQS for lead (0.15 $\mu g/m^3$). Results of this analysis confirmed that the NAAQS for lead would not be exceeded by any facility.

d. Environmental Risk Screening Results

The emissions data for the Surface Coating of Metal Coil source category indicate that two environmental HAP are emitted by sources within this source category: HF and lead. Therefore, we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of HF and lead for the Surface Coating of Metal Coil source category. For HF, each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. For lead, we did not estimate any exceedances of the secondary lead NAAQS. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

Sixteen facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 40-in-1 million, driven by naphthalene from equipment cleanup of metal coil coating processes. The total estimated cancer incidence from the whole facility is 0.02 excess cancer cases per year, or one excess case in every 50 years. Approximately 270,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the 48 facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 5, driven by emissions of chlorine from a secondary aluminum fluxing process.

f. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the Surface Coating of Metal Coil source category across different demographic groups within the populations living near facilities.[30]

The results of the demographic analysis are summarized in Table 5 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 5—SURFACE COATING OF METAL COIL SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of metal coil	Population with chronic hazard index above 1 due to surface coating of metal coil
Total Population	317,746,049	19,000	0
Race by Percent			
White	62	70	0
All Other Races	38	30	0

[30] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living above the poverty level, and linguistically isolated people.

TABLE 5—SURFACE COATING OF METAL COIL SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of metal coil	Population with chronic hazard index above 1 due to surface coating of metal coil
Race by Percent			
White	62	70	
African American	12	21	0
Native American	0.8	0.1	0
Hispanic or Latino	18	4	0
Other and Multiracial	7	5	0
Income by Percent			
Below the Poverty Level	14	15	0
Above the Poverty Level	86	85	0
Education by Percent			
Over 25 and Without a High School Diploma	14	10	0
Over 25 and With a High School Diploma	86	90	0

The results of the Surface Coating of Metal Coil source category demographic analysis indicate that emissions from the source category expose approximately 19,000 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer TOSHI greater than 1 (we note that many of those in the first risk group are the same as those in the second). The percentages of the at-risk population in each demographic group (African American and Below the Poverty Level) are greater than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations,* May 2017 (hereafter referred to as the *Metal Coil Demographic Analysis Report*), available in the Metal Coil Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Surface Coating of Metal Coil source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 10-in-1 million due to actual emissions and allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows very low cancer incidence (0.005 cases per year for actual emissions and 0.006 cases per year for allowable emissions), and we did not identify potential for adverse chronic noncancer health effects.

The acute screening analysis results in a maximum acute noncancer HQ of 3 for DGME. Since there is not a specified acute dose-response value for DGME, we applied the most protective dose-response value from the other glycol ether compounds, the acute REL for ethylene glycol monomethyl ether, to estimate risk. Given that ethylene glycol monomethyl ether is more toxic than other glycol ethers, the use of this surrogate is a health-protective choice in the EPA's risk assessment.

For acute screening analyses, to better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, we examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in acknowledgement that there are generally more data gaps and uncertainties in acute reference values than there are in chronic reference values. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures; however, the level of exposure that would cause health effects is not specifically known. As the exposure concentration increases above the acute REL, the potential for effects increases. Therefore, when an REL is exceeded and an AEGL–1 or ERPG–1 level is available (*i.e.,* levels at which mild, reversible effects are anticipated in the general population for a single exposure), we typically use them as an additional comparative measure, as they provide an upper bound for exposure levels above which exposed individuals could experience effects. However, for glycol ethers, these values are not available.

Additional uncertainties in the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA include several factors. The degree of accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we include the conservative (health-protective) assumptions that peak emissions from each emission point in the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during the same time period. For this source category, these assumptions are likely to

overestimate the true worst-case actual exposures, as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously. Thus, as discussed in the Metal Coil Risk Assessment Report in the docket for this action, by assuming the co-occurrence of independent factors for the acute screening assessment, the results are intentionally biased high and are, thus, health-protective. We conclude that adverse effects from acute exposure are not anticipated due to emissions from this source category.

In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose that the risks from the Surface Coating of Metal Coil source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Surface Coating of Metal Coil source category are acceptable, risk estimates for approximately 19,000 individuals in the exposed population are above 1-in-1 million at the actual emissions level, and 24,000 individuals in the exposed population are above 1-in-1 million at the allowable emissions level. Consequently, we further considered whether the MACT standards for the Surface Coating of Metal Coil source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Metal Coil source category, and we reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Metal Coil NESHAP. Based on our review, we did not identify any add-on control technologies, other equipment, or work practices and procedures that had not previously been considered during development of the Surface Coating of Metal Coil NESHAP, and we did not identify any developments since the promulgation of the NESHAP. Therefore, we are proposing that additional emissions controls for this source category are not necessary to provide an ample margin of safety.

c. Environmental Effects

The emissions data for the Surface Coating of Metal Coil source category indicate that two environmental HAP are emitted by sources within this source category: HF and lead. The screening-level evaluation of the potential for adverse environmental risks associated with emissions of HF from the Surface Coating of Metal Coil source category indicated that each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. In addition, we are unaware of any adverse environmental effects caused by HAP emitted by this source category. For lead, we did not estimate any exceedances of the secondary lead NAAQS. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category, and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Metal Coil source category. The EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Metal Coil NESHAP to support the technology review. The information sources included the following: The RBLC; the California Statewide BACT Clearinghouse; regulatory actions, including technology reviews promulgated for other surface coating NESHAP subsequent to the Surface Coating of Metal Coil NESHAP; state regulations; facility operating permits; a site visit; and industry information from individual facilities and the industry trade association. The primary emission sources for the technology review are the coil coating application stations and associated curing ovens.

Based on our review, we did not identify any add-on control technologies, process equipment, work practices, or procedures that had not been previously considered during development of the Surface Coating of Metal Coil NESHAP, and we did not identify any new or improved add-on control technologies that would result in additional emission reductions. A brief summary of the EPA's findings in conducting the technology review of coil coating operations follows. For a detailed discussion of the EPA's findings, refer to the Metal Coil Technology Review memorandum in the Metal Coil Docket.

The technology basis for MACT for metal coil coating operations in the 2002 Surface Coating of Metal Coil NESHAP was emission capture and add-on control with an OCE of 98 percent for new or reconstructed sources and existing sources. This OCE represents the use of PTE to achieve 100-percent capture of application station HAP emissions and a thermal oxidizer to achieve a destruction efficiency of 98-percent. No technology was identified at that time that could achieve a better OCE than the use of a PTE to capture HAP emissions from the coating application station and a thermal oxidizer to destroy HAP emissions from the coating application and the curing oven. An alternative facility HAP emission rate limit of 0.24 pounds of HAP per gallon of solids applied was also established to provide a compliance option for facilities that chose to limit their coating line HAP emissions either through a combination of low-HAP coatings and add-on controls or through the use of waterborne, high solids, or other pollution prevention coatings. During development of that rulemaking, we identified no beyond-the-floor technology that could achieve a higher OCE.

Using the EPA's NEI and the ECHO databases, we identified 48 major source facilities that are currently subject to the Surface Coating of Metal Coil NESHAP. A search of the RBLC database for improvements in coil coating technologies resulted in no findings. Therefore, we conducted a comprehensive review of state operating permits for 39 of the 48 facilities that were available on-line to determine whether any are using improved technologies or technologies that were not considered during the development of the original NESHAP. The review revealed that 37 of the 39 facilities had add-on controls (*e.g.,* thermal oxidizers, catalytic oxidizers, and regenerative thermal oxidizers) and three of the 39 facilities had only partial control (*i.e.,* not all coil coating lines had control).

The state permits included VOC emission limitations issued prior to promulgation of the Surface Coating of Metal Coil NESHAP. No permit had a

VOC limit lower than the Metal Coil New Source Performance Standards published in 1982 (40 CFR part 60, subpart TT). Because none of these limitations were more stringent than the HAP content limit, and all were based on control options considered in the development of the NESHAP, we concluded that none of these limitations represented a development in practices, processes, and control technologies for the Surface Coating of Metal Coil source category.

We reviewed other surface coating NESHAP promulgated subsequent to the Surface Coating of Metal Coil NESHAP to determine whether any requirements exceed the Metal Coil MACT level of control or include technologies that were not considered during the development of the original Surface Coating of Metal Coil NESHAP. These NESHAP include Surface Coating of Miscellaneous Metal Parts and Products (40 CFR part 63, subpart MMMM), Surface Coating of Plastic Parts and Products (40 CFR part 63, subpart PPPP), and Surface Coating of Automobiles and Light-Duty Trucks (40 CFR part 63, subpart IIII). We also reviewed the results of the technology reviews for other surface coating NESHAP promulgated after the Surface Coating of Metal Coil NESHAP. These NESHAP include Printing and Publishing (40 CFR part 63, subpart KK), Shipbuilding and Ship Repair (40 CFR part 63, subpart II), and Wood Furniture Manufacturing (40 CFR part 63, subpart JJ). Technology reviews for these NESHAP identified PTE and/or RTO as improvements in add-on control technology. Because the Surface Coating of Metal Coil NESHAP already includes a compliance option involving the use of a PTE and an add-on control device, and because these measures were considered in the development of the Surface Coating of Metal Coil NESHAP, we concluded that these measures do not represent a development in control technology under CAA section 112(d)(6). The technology review conducted for the Wood Furniture Manufacturing NESHAP identified the use of more efficient spray guns as a technology review development and revised the requirements to prohibit the use of conventional spray guns. Because the Surface Coating of Metal Coil source category does not use spray equipment, this development is not applicable to metal coil coating operations. In conclusion, we found no improvements in add-on control technology or other equipment during review of the RBLC, the state operating permits, and subsequent NESHAP that were not already identified and considered during Surface Coating of Metal Coil NESHAP development.

Alternatives to solvent borne coatings were identified and considered during MACT development but were not considered to be suitable for all coil coating end-product applications. These alternative coatings include waterborne coatings, low energy electron beam/ultraviolet cured coatings, and powder coatings. These coatings were used by about 10 percent of coil coating facilities according to the MACT survey. Our permit review concluded that this trend continues today and only about 10 percent of the facilities use these coatings to meet the Surface Coating of Metal Coil NESHAP emission limits. Most coil coaters have solvent destruction systems in place, which enables them to use organic paint solvents as a fuel supplement. The only anticipated technology change in the area of coating reformulation for the metal coil surface coating category is the replacement of coatings that contain the hexavalent chromate ion with more benign corrosion-inhibiting species that provide the same long-term protection to metals. The coil coating producers have worked unsuccessfully on this coating reformulation for the past 20 years.

Carbon adsorption was identified and considered for add-on control during Metal Coil MACT development, and although it is technologically feasible, no U.S. coil coaters used carbon adsorption due to the high temperature of the oven exhaust. The high temperature would inhibit adsorption of VOC on activated carbon in the adsorber beds. Therefore, we do not consider these measures to represent a development under CAA section 112(d)(6).

Finally, we identified no developments in work practices or procedures for the Surface Coating of Metal Coil source category, including work practices and procedures that are currently prescribed in the NESHAP that were not previously identified and considered during MACT development. The facility survey, conducted during MACT development, revealed that several types of work practices and housekeeping techniques were being used. However, the final rule applied only to the coating application stations and the associated curing ovens (*i.e.,* the affected source). The final rule did not apply to coating storage and mixing/thinning operations and did not apply to the equipment cleaning operations that are the primary operations to which the work practices would have been applied.

Based on these findings, we conclude that there have not been any developments in add-on control technology or other equipment not identified and considered during MACT development, nor any improvements in add-on controls, nor any significant changes in the cost (including cost effectiveness) of the add-on controls. Therefore, we are proposing no revisions to the Surface Coating of Metal Coil NESHAP pursuant to CAA section 112(d)(6). For further discussion of the technology review results, refer to the Metal Coil Technology Review Memorandum in the Metal Coil Docket.

4. What other actions are we proposing for the Surface Coating of Metal Coil source category?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP. We are proposing to amend 40 CFR 63.5090 to clarify that 40 CFR part 63, subpart SSSS does not apply to the application to bare metal coils of markings (including letters, numbers, or symbols) that are used for product identification or for product inventory control. In the public comments on the proposed initial MACT standard subpart SSSS (40 FR 44616, July 18, 2000),[31] the request was made that the EPA clarify in the final rule that subpart SSSS did not apply to incidental printing operations that applied a company name or logo, or other markings to bare metal coils for product identification or inventory control purposes. (See EPA Air Docket A–97–47, item V–B–1, Report, National Emission Standards for Hazardous Air Pollutants: Metal Coil Surface Coating Background Information for Promulgated Standards, EPA: OAQPS, Publication number EPA–453R–02–009, May 2002.) The commenters suggested revising the definition of ''coil coating operation'' to read ''the collection of equipment used to apply an organic coating to all or substantially all of the surface width of a continuous metal strip.'' The EPA responded at the time that it agreed that these types of markings applied to bare metal were simply not considered to be part of a coil coating operation, and therefore were not intended to be covered by the coil coating NESHAP subpart SSSS. However, the EPA did not want to exclude operations that applied a printed image to a coated metal coil from coverage by subpart SSSS because they were considered integral to certain

[31] See *National Emissions Standards for Hazardous Air Pollutants: Metal Coil Surface Coating Background Information for Promulgated Standards,* EPA–453/R–02–009, May 2002 in the Metal Coil Docket.

coil coating operations and part of the coil coating line and affected source. During the development of these proposed amendments to subpart SSSS, we were notified by steel coil manufacturers that the applicability of subpart SSSS to the application of identification markings to bare metal coils was still unresolved. The steel coil manufacturers asked us to amend subpart SSSS be amended to clarify this applicability issue and whether these identification markings are subject to subpart SSSS. Therefore, we are proposing to clarify that the application of identification markings (including letters, numbers, or symbols) to bare metal coils is not part of a coil coating line and not part of a coil coating affected source. However, we intend to continue to regulate application of printed images to coated steel coils as part of the coil coating affected source. Therefore, the application of letters, numbers, or symbols to a coated metal coil is still considered a coil coating process and part of the coil coating source category.

In addition, we are proposing to require electronic submittal of notifications (initial and compliance status), semiannual reports, and performance test reports for metal coil surface coating facilities. We are also proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. And finally, we are proposing the IBR of optional EPA Method 18, IBR of an alternative test method, and various technical and editorial changes. Our analyses and proposed changes related to these issues are discussed in the sections below.

a. Electronic Reporting Requirements

The EPA is proposing that owners and operators of facilities subject to the Surface Coating of Metal Coil NESHAP submit electronic copies of initial notifications required in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), performance test reports, and semiannual reports through the EPA's CDX, using the CEDRI. A description of the EPA's CDX and the EPA's proposed rationale and details on the addition of these electronic reporting requirements for the Surface Coating of Metal Coil source category is the same as for the Surface Coating of Metal Cans source category, as discussed in section IV.A.4.a of this preamble. A description of the electronic submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS)* and *National Emission Standards for Hazardous Air Pollutants (NESHAP),* August 8, 2018, in the Metal Coil Docket. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. If electronic forms are developed for these notifications, we will notify sources about their availability via the CEDRI website. For semiannual reports, the EPA proposes that owners or operators use the final semiannual report template that will reside in CEDRI one year after finalizing this proposed action. The *Proposed Electronic Reporting Template for Surface Coating of Metal Coil Subpart SSSS Semiannual Report* is available for review and comment in the Metal Cans Docket as part of this action. We specifically request comment on the format and usability of the template (*e.g.,* filling and uploading a provided spreadsheet versus entering the required information into a fillable CEDRI web form), as well as the content, layout, and overall design of the template. Prior to availability of the final semiannual compliance report template in CEDRI, owners or operators of affected sources will be required to submit semiannual compliance reports as currently required by the rule. After development of the final semiannual compliance report template, metal coil sources will be notified about its availability via the CEDRI website. We plan to finalize a required reporting format with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic template has been available for at least one year. For the electronic submittal of notifications of compliance status reports required in 40 CFR 63.9(h), the final semiannual report template discussed above, which will reside in CEDRI, will also contain the information required for the notifications of compliance status report and will satisfy the requirement to provide the notifications of compliance status information electronically, eliminating the need to provide a separate notifications of compliance status report. As stated above, the final semiannual report template will be available after finalizing this proposed action and sources will be required to use the form after one year. Prior to the availability of the final semiannual compliance report template in CEDRI, owners and operators of affected sources will be required to submit semiannual compliance reports as currently required by the rule. As stated above, we will notify sources about the availability of the final semiannual report template via the CEDRI website.

Regarding submittal of performance test reports via the EPA's ERT, as discussed in section IV.A.4.a of this preamble for the Surface Coating of Metal Cans NESHAP, the proposal to submit performance test data electronically to the EPA applies only if the EPA has developed an electronic reporting form for the test method as listed on the EPA's ERT website. For the Surface Coating of Metal Coil NESHAP, all of the EPA test methods listed under 40 CFR part 63, subpart SSSS, are currently supported by the ERT, except for EPA Method 25 and EPA Method 18 (an optional test method proposed in this action), which appears in the proposed text for 40 CFR 63.5160. As mentioned above, the rule proposes that should an owner or operator choose to use EPA Method 25 or EPA Method 18, then its results would be submitted in PDF using the attachment module of the ERT.

Also, as discussed in section IV.A.4.a of this preamble for the Surface Coating of Metal Cans NESHAP, we are proposing to provide facilities with the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility. In proposed 40 CFR 63.5181(d), we address the situation for facilities subject to the Surface Coating of Metal Coil NESHAP where an extension may be warranted due to outages of the EPA's CDX or CEDRI, which may prevent access to the system and submittal of the required reports. In proposed 40 CFR 63.5181(e), we address the situation for facilities subject to the Surface Coating of Metal Coil NESHAP where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents compliance with the requirement to submit a report electronically as required by this rule.

b. SSM Requirements

1. Proposed Elimination of the SSM Exemption

The EPA is proposing to eliminate the SSM exemption in the Surface Coating of Metal Coil NESHAP. The EPA's

proposed rationale for the elimination of the SSM exemption for the Surface Coating of Metal Coil source category is the same as for the Surface Coating of Metal Cans source category, which is discussed in section IV.A.4.b.1 of this preamble. We are also proposing several revisions to Table 2 to Subpart SSSS of 40 CFR part 63 (*Applicability of General Provisions to Subpart SSSS,* hereafter referred to as the ''General Provisions table to subpart SSSS'') as is explained in more detail below in section IV.B.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We are also proposing to delete 40 CFR 63.4342(h), which specifies that deviations during SSM periods are not violations. Further, we are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below. The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the same reasons explained in section IV.A.4.b.1 of this preamble for the Surface Coating of Metal Cans source category, has not proposed alternate standards for those periods in the Surface Coating of Metal Coil NESHAP. Startups and shutdowns are part of normal operations for the Surface Coating of Metal Coil source category. As currently specified in 40 CFR 63.5121(a), any coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable operating limits in Table 1 to 40 CFR part 63, subpart SSSS ''at all times,'' except for solvent recovery systems for which you conduct liquid-liquid material balances according to 40 CFR 63.5170(e)(1). (Solvent recovery systems for which you conduct a liquid-liquid material balance require a monthly calculation of the solvent recovery device's collection and recovery efficiency for volatile organic matter.)

Also, as currently specified in 40 CFR 63.3500(a)(2), any coating operation(s) for which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option must be in compliance ''at all times'' with the applicable emission limitations in 40 CFR 63.3500(a)(2). During startup and shutdown periods, in order for a facility (using add-on controls to meet the standards) to meet the emission and operating standards, the control device for a coating operation needs to be turned on and operating at specified levels before the facility begins coating operations, and the control equipment needs to continue to be operated until after the facility ceases coating operations. In some cases, the facility needs to run thermal oxidizers on supplemental fuel before VOC levels are sufficient for the combustion to be (nearly) self-sustaining. Note that we are also proposing new related language in 40 CFR 63.5140(b) to require that the owner or operator operate and maintain the coating operation, including pollution control equipment, at all times to minimize emissions. See section IV.A.4.b.2 of this preamble for further discussion of this proposed revision.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible, as discussed previously in section IV.A.4.b.1 of this preamble for the Surface Coating of Metal Can source category.

It is unlikely that a malfunction would result in a violation of the standards during metal coil surface coatings operations for facilities using the compliant material ''as-purchased'' or ''as-applied'' options or the coating materials averaging option. Facilities using these options have demonstrated that the organic HAP content of each coating material as-purchased does not exceed 0.046 kg HAP per liter of solids as purchased, or that each coating material as-applied does not exceed 0.046 kg HAP per liter of solids on a rolling 12-month average basis and determined on a monthly basis, or that the average HAP content of all coating materials used does not exceed 0.046 kg HAP per liter of solids as applied based on a rolling 12-month emission rate and determined on a monthly basis.

A malfunction event is more likely for metal coil coating facilities that use the emission rate with add-on controls option or the combination of compliant coatings and control device option. For add-on control options, facilities must demonstrate an overall organic HAP control efficiency of at least 98 percent, or that the oxidizer outlet HAP concentration is no greater than 20 ppmv and 100-percent capture efficiency and that operating limits are achieved continuously. For the combination option, facilities must demonstrate that the average equivalent emission rate does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as-applied basis, determined monthly. Operating limits for the capture and control devices are listed in Table 1 to 40 CFR part 63, subpart SSSS of the Surface Coating of Metal Coil NESHAP and must be achieved continuously. The operating limits are based on maintaining an average temperature over a 3-hour block period, which must not fall below the temperature limit established by the facility during its initial performance test.

We currently have no information to suggest that it is feasible or necessary to establish any type of standard for malfunctions associated with the Surface Coating of Metal Coil source category. We encourage commenters to provide any such information, if available.

In the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. Refer to section IV.A.4.b.1 of this preamble for further discussion of the EPA's actions in response to a source failing to comply with the applicable CAA section 112(d) standards as a result of a malfunction event for the Surface Coating of Metal Cans source category, which applies to this source category.

2. Proposed Revisions to the General Provisions Applicability Table

a. 40 CFR 63.5140(b) General Duty

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.5140(b) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations,

startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.5140(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.5140(b).

b. SSM Plan

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart SSSS, the current provisions requiring the SSM plan in 40 CFR 63.5180(f) and requiring reporting related to the SSM plan in 40 CFR 63.5180(f)(1). As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance, and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

d. 40 CFR 63.5160 Performance Testing

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.5160(d)(2). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. Also, the proposed performance testing provisions will not allow performance testing during startup or shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language clarifying that the owner or operator must make such records available to the Administrator upon request.

e. Monitoring

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.8(a)(4) by changing the ''yes'' in column 3 to a ''no.'' Section 63.8(a)(4) describes additional monitoring requirements for control devices. Subpart SSSS of 40 CFR part 63 does not have monitoring requirements for flares.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.8(c)(1) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). Further, we are proposing to revise 40 CFR 63.5150(a) to add a requirement to maintain the monitoring equipment at all times in accordance with 40 CFR 63.5140(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment, consistent with the requirements in 40 CFR 63.8(c)(1)(ii). The reference to 40 CFR 63.8(c)(1)(ii) is no longer needed since it is redundant to the requirement in 40 CFR 63.5150(a).

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.8(c)(6) by changing the ''yes'' in column 3 to a ''no.'' The reference to 40 CFR 63.8(c)(6) is no longer needed since it is redundant to the requirement in 40 CFR 63.5170 that specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.8(c)(8) by changing the ''yes'' in column 3 to a ''no.'' The reference to 40 CFR 63.8(c)(8) is no longer needed since it is redundant to the requirement in 40 CFR 63.5180(i) that requires reporting of CEMS out-of-control periods.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.8(d)–(e) by changing the ''yes'' in column 3 to a ''no.'' The requirements for quality control program and performance evaluation of CMS are not required under 40 CFR part 63, subpart SSSS.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.8(g) by changing the ''yes'' in column 3 to a ''no.'' The reference to 40 CFR 63.8(c)(8) is no longer needed since it is redundant to the requirement in 40 CFR 63.5170, 63.5140, 63.5150, and 63.5150 that specify monitoring data reduction.

f. 40 CFR 63.5190 Recordkeeping

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each

malfunction.'' A similar record is already required in 40 CFR 63.5190(a)(5), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.5190(a)(5) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.5190(a)(5) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.5190(a)(5) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA proposes to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.5190(a)(5).

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.10(b)(2)(x)–(xiii) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

g. 40 CFR 63.5180 Reporting

We are proposing to revise the General Provisions table to subpart SSSS (Table 2) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.5180(f). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. Subpart SSSS of 40 CFR part 63 currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from a standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' or ''date and time'' to ''date, time, and duration'' (see proposed revisions to 40 CFR 63.5180(h)(2), 63.5180(h)(3), 63.5180(i)(3), and 63.5180(i)(4)). Further, we are proposing that the report must also contain the number of deviations from the standard and a list of the affected sources or equipment. For deviation reports addressing deviations from an applicable emission limit in Table 1 to 40 CFR 63.5170 or operating limit in Table 1 to 40 CFR part 63, subpart SSSS, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions.

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate 40 CFR 63.5180(f)(1) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross reference to 40 CFR 63.10(d)(5) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to remove the requirements in 40 CFR 63.5180(i)(6) that deviation reports must specify whether a deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.5180(i)(6) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble for the Surface Coating of Metal Cans source category, which also applies to this source category.

c. Technical Amendments to the Metal Coil NESHAP

We propose to amend 40 CFR 63.5160(d)(1)(vi) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions

by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using the emission rate with add-on control compliance option can use either EPA Method 25 or EPA Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, EPA Method 25A does not exclude methane from the measurement of organic emissions. Because exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure methane using EPA Method 18 and to subtract the methane from the emissions as part of their compliance calculations. We also propose to revise the format of references to test methods in 40 CFR part 60. The current references in 40 CFR 63.5160(d)(1) to EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of 40 CFR part 60. Appendix A of 40 CFR part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

We propose to amend 40 CFR 63.5160(b)(1)(i) and 63.5160(b)(4), which describe how to demonstrate compliance with the emission limitations using the compliant material option, to remove references to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) is intended to specify which compounds must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass. We propose to remove this reference because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We propose to replace these references to OSHA-defined carcinogens at 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 3 to 40 CFR part 63, subpart SSSS) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass.

We propose to include organic HAP in proposed Table 3 to 40 CFR part 63, subpart SSSS if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[32] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

Current 40 CFR 63.5190 specifies records that must be maintained. We propose to add clarification to this provision at 40 CFR 63.5190(c) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

We propose to clarify and harmonize the general requirement in 40 CFR 63.5140(a) with the reporting requirement in 40 CFR 63.5180(g)(2)(v) and 40 CFR 63.5180(h)(4) and the recordkeeping requirement in 40 CFR 63.5190(a)(5). Section 40 CFR 63.5140(a) currently states that, ''You must be in compliance with the standards in this subpart at all times . . .''. We propose to add clarification to this text to read; ''You must be in compliance with the applicable emission standards in 40 CFR 63.5120 and the operating limits in Table 1 of this subpart at all times.''

If there were no deviations from the applicable emission limit, 40 CFR 63.5180(g)(2)(v) requires you to submit a semiannual compliance report containing specified information including, ''A statement that there were no deviations from the standards during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.'' We are proposing to revise the text to read, ''A statement that there were no deviations from the applicable emission limit in § 63.5120 or the applicable operating limit(s) established according to § 63.5121 during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.'' Conforming changes are also being proposed to the reporting requirement at 40 CFR 63.5180(h)(4) and the recordkeeping requirement at 40 CFR 63.5190(a)(5).

We propose to revise one instance in 40 CFR 63.5160(e) regarding performance testing in which an erroneous rule citation, ''§ 63.5170(h)(2) through (4),'' is specified. Section 63.5170 provides requirements to demonstrate compliance with the standards for each compliance option and refers back to the capture efficiency procedure in 40 CFR 63.5160(e). Sections 63.5170(h)(2) through (4) pertain to the mass of coatings and solvents used in the liquid-liquid material balance calculation of HAP in Equation 10 of the subpart and are unrelated to capture efficiency. Sections 63.5170(g)(2) through (4) include capture efficiency determinations which are not referenced by 40 CFR 63.5160(e); therefore, we propose to change the erroneous citation from ''§ 63.5170(h)(2) through (4)'' to ''§ 63.5170(g)(2) through (4).''

We are proposing to amend 40 CFR 63.5130(a) to clarify that the compliance date for existing affected sources is June 10, 2005.

We are proposing to amend 40 CFR 63.5160(d)(3)(ii)(D) to correct a typographical error in a reference to paragraphs ''(d)(3)(ii)(D)(1 (3).'' The correct reference is to paragraphs (d)(3)(ii)(D)(1)–(3).

We are proposing to amend 40 CFR 63.5170(c)(1) and (2) to correct the cross references to 40 CFR 63.5120(a)(1) or (2). The correct cross references are to 40 CFR 63.5120(a)(1) or (3), because these are the two compliance options relying on the overall organic HAP control efficiency and the oxidizer outlet HAP concentration.

We are proposing to amend Equation 11 in 40 CFR 63.5170 so that the value calculated by the equation is correctly identified as ''H_e'' instead of just ''e.''

d. Ongoing Emissions Compliance Demonstrations

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the Surface Coating of Metal Coil NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require ongoing periodic performance testing for these emission capture systems and add-on controls. In this action we are proposing to require periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing, and ongoing temperature measurement, to ensure ongoing compliance with the standards.

[32] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

As described more fully in section IV.A.4.d of this preamble for the Surface Coating of Metal Cans source category, the EPA documented potential operational problems associated with control devices in several publications; [33] the ICAC, in their comments on a separate rulemaking on the proposed revisions related to the NESHAP General Provisions (72 FR 69, January 3, 2007), commented that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology, including both thermal and catalytic oxidizers, remains effective; [34] and state websites list CAA enforcement information that further corroborates the potential problems identified by the EPA and ICAC comments and conclusions.

Given the need for vigilance in maintaining equipment to stem degradation, the EPA is proposing to require periodic testing of add-on control devices, in addition to the one-time initial emissions and capture efficiency testing and ongoing temperature measurement, to ensure ongoing compliance with the Surface Coating of Metal Coil NESHAP.

In this action, the EPA is requiring periodic performance testing of add-on control devices on a regular frequency (*e.g.,* every 5 years) to ensure the equipment continues to operate properly for facilities using the emission rate with add-on controls compliance option. We note that about half of the state operating permits for existing metal coil coating sources already require such testing every 5 years synchronized with 40 CFR part 70 air operating permit renewals. This proposed periodic testing requirement includes an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control option at 40 CFR 63.5160(d)(3)(ii) and following the catalyst maintenance procedures in 40 CFR 63.5160(d)(3)(ii)(C). This exception is due to the catalyst maintenance procedures that already require annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test.

The proposed periodic performance testing requirement allows an exception from periodic testing for facilities using instruments to continuously measure emissions. Such CEMS would show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

This proposed requirement would not require periodic testing or CEMS monitoring of facilities using the ''as purchased'' or ''as applied'' compliant coatings options because these compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement would require that facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would conduct the periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule and not be required to move up the date of the next test to the 3-year date specified above. This proposed requirement would require periodic air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. The emissions would be measured as total gaseous organic mass emissions as carbon using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost to perform a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Draft Costs/ Impacts of the 40 CFR part 63 subparts KKKK and SSSS Monitoring Review Revisions,* in the Metal Coil Docket. We have reviewed the operating permits for facilities subject to the Surface Coating of Metal Coil NESHAP, and we found that about one-half of the affected sources currently using emission capture systems and add-on controls are required to conduct periodic control device performance tests as a condition of their 40 CFR part 70 operating permits. We estimate that 21 metal coil coating facilities with 30 add-on control devices currently are not required to conduct periodic testing of their control devices as a condition of their permit renewal. Periodic performance tests ensure that all control systems used to comply with the NESHAP would be properly maintained over time, thereby reducing the potential for acute emissions episodes and non-compliance.

We are requesting comment on adding periodic testing of add-on control devices to the Surface Coating of Metal Coil NESHAP and on the suggested 5-year schedule for the periodic testing.

e. IBR of Alternative Test Methods Under 1 CFR Part 51

The EPA is proposing new and updated test methods for the Surface Coating of Metal Coil NESHAP that include IBR. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to add the following optional EPA method and incorporate by reference the VCS described in the amendments to 40 CFR 63.14:

- EPA Method 18 of appendix A to 40 CFR part 60, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography, proposed for 40 CFR 63.5160(d)(vi);
- ASTM Method D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, proposed to be IBR approved for 40 CFR 63.5160(c);
- ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, proposed to be IBR approved for 40 CFR 63.5160(c);
- ASTM D2369–10 (2015), Test Method for Volatile Content of Coatings, proposed to be IBR approved for 40 CFR 63.5160(b)(2);
- ASTM D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, proposed to be IBR approved for 40 CFR 63.5160(c); and

[33] See *Control Techniques for Volatile Organic Compound Emissions from Stationary Sources,* EPA/453/R–92–018, December 1992, *Control Technologies for Emissions from Stationary Sources,* EPA/625/6–91/014, June 1991, and *Survey of Control for Low Concentration Organic Vapor Gas Streams,* EPA–456/R–95–003, May 1995. These documents can be found in the Metal Cans and Metal Coil dockets for this action.

[34] See Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *www.regulations.gov.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Metal Cans and Metal Coil Dockets for this action.

• ASTM D6093–97 (2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, proposed to be IBR approved for 40 CFR 63.5160(c).

Older versions of ASTM methods D2697 and D6093 were incorporated by reference when the Surface Coating of Metal Coil NESHAP was originally promulgated (67 FR 39794, June 10, 2002). We are proposing to replace the older versions of these methods with updated versions, which requires IBR revisions. The updated version of the method replaces the older version in the same paragraph of the rule text. We are also proposing the addition of EPA Method 18 and incorporating by reference ASTM methods D1475, D2111, and D2369 to the Surface Coating of Metal Coil NESHAP for the first time in this rulemaking. Refer to section VIII.J of this preamble for further discussion of these VCS.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources must comply with all of the amendments, with the exception of the proposed electronic format for submitting semiannual compliance reports, no later than 181 days after the effective date of the final rule, or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart SSSS until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart SSSS. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically. We are proposing that the semiannual compliance report be submitted electronically using a new template, which is available for review and comment as part of this action. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is proposing that existing affected sources be in compliance with all of this regulation's revised requirements within 181 days of the regulation's effective date.

We solicit comment on these proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

Currently, five major sources subject to the Surface Coating of Metal Cans NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source.

Currently, 48 major sources subject to the Surface Coating of Metal Coil NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all the coil coating lines at a facility, including the equipment used to apply an organic coating to the surface of metal coil. A coil coating line includes a web unwind or feed section, a series of one or more work stations, any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material. Metal coil is a continuous metal strip that is at least 0.15 mm (0.006 inch) thick, which is packaged in a roll or coil prior to coating. Material less than 0.15 mm (0.006 inch) thick is considered metal foil, not metal coil. The NESHAP applies to coating lines on which more than 15 percent of the material coated, based on surface area, meets the definition of metal coil. There may be multiple coating operations in an affected source.

B. What are the air quality impacts?

At the current level of control, estimated emissions of volatile organic HAP from the Surface Coating of Metal Cans source category are approximately 77 tpy. Current estimated emissions of volatile organic HAP from the Surface Coating of Metal Coil source category are approximately 291 tpy.

The proposed amendments require that all 53 major sources in the Surface Coating of Metal Cans and Surface Coating of Metal Coil source categories comply with the relevant emission standards at all times, including periods of SSM. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that would occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

Indirect or secondary air emissions impacts are impacts that would result

from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The proposed amendments would have no effect on the energy needs of the affected facilities in either of the two source categories and would, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We estimate that each facility in these two source categories will experience costs as a result of these proposed amendments that are estimated as part of the reporting and recordkeeping costs. Each facility will experience costs to read and understand the rule amendments. Costs associated with elimination of the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section V.III.C of this preamble.

We are also proposing a requirement for performance testing no less frequently than every 5 years for sources in each source category using the add-on controls compliance options. We estimate that one facility subject to the Metal Can Surface Coating NESHAP and using three add-on control devices would incur costs to conduct control device performance testing because it is using the emission rate with add-on controls compliance option and is not required by its permit to conduct testing every 5 years. We estimate that 21 major source facilities subject to the Surface Coating of Metal Coil NESHAP would incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option and are not required by their permits to conduct testing every 5 years. These 21 metal coil coating facilities have a total of 30 add-on controls. This total does not include facilities in the Surface Coating of Metal Coil source category that have add-on controls and are currently required to perform periodic performance testing as a condition of their state operating permit. The cost for a facility to conduct a destruction or removal efficiency performance test using EPA Method 25 or 25A is estimated to be about $19,000, with tests of additional control devices at the same facility costing 25 percent less due to reduced travel costs. The total cost for the one metal can surface coating facility to test three add-on control devices in a single year would be $47,000. The total cost for all 21 facilities to test 30 add-on control devices in a single year, plus two retests to account for 5 percent of control devices failing to pass the first test, would be $560,000. The total annualized testing cost is approximately $11,000 per year for the Metal Can Surface Coating source category, and $130,000 per year for the Metal Coil Surface Coating source category, including retests. In addition to the testing costs, each facility performing a test will have an additional $5,500 in reporting costs per facility in the year in which the test occurs. For further information on the potential costs, see the cost tables in the memoranda titled *Estimated Costs/Impacts of the 40 CFR part 63 Subparts KKKK and SSSS Monitoring Review Revisions,* February 2019, and the *Economic Impact and Small Business Screening Assessments for Hazardous Air Pollutants for Metal Cans Coating Plants (Subpart KKKK) and the Economic Impact and Small Business Screening Assessments for Hazardous Air Pollutants for Metal Coil Coating Plants (Subpart SSSS)* in the Metal Cans and Metal Coil Dockets.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of a regulatory action. For the current proposals, the EPA estimated the cost of becoming familiar with the rule and re-evaluating previously developed SSM record systems and performing periodic emissions testing at certain facilities with add-on controls that are not already required to perform testing. To assess the maximum potential impact, the largest cost expected to be experienced in any one year is compared to the total sales for the ultimate owner of the affected facilities to estimate the total burden for each facility.

For the proposed revisions to the NESHAP for the Surface Coating of Metal Cans, the total annualized cost is estimated to be $11,000 for performance testing in year 3 for the five affected entities. The five affected facilities are owned by three different parent companies, and the total costs associated with the proposed requirements range from 0.00002 to 0.77 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

For the proposed revisions to the NESHAP for the Surface Coating of Metal Coil, the total annualized cost is estimated to be $130,000 for performance testing in year 3 for the 48 affected entities. The 48 affected facilities are owned by 25 different parent companies, and the total costs associated with the proposed requirements range from 0.00001 to 0.28 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. One of the facilities potentially affected by the proposed revisions to the NESHAP for the Surface Coating of Metal Cans is a small entity. Ten of the facilities potentially affected by the proposed revisions to the NESHAP for the Surface Coating of Metal Coil are small entities. However, the annualized costs associated with the proposed requirements for the seven ultimate owners of these eleven affected small entities range from 0.0029 to 0.77 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these proposed amendments.

More information and details of this analysis is provided in the technical documents titled *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Cans (Subpart KKKK)* and *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Coil (Subpart SSSS),* available in the Metal Cans and Metal Coil Dockets, respectively.

E. What are the benefits?

As stated above in section V.B. of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption, although this proposed change has the potential to reduce emissions of volatile organic HAP.

Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*. The data files include detailed information for each HAP emissions release point for the facilities in these source categories.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to the Metal Cans Docket or Metal Coil Docket, as applicable, through the method described in the **ADDRESSES** section of this preamble.

5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

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

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposal have been submitted for approval to OMB under the PRA, as discussed for each source category covered by this proposal in sections VIII.C.1 through 2.

1. Surface Coating of Metal Cans

The ICR document that the EPA prepared has been assigned EPA ICR number 2079.07. You can find a copy of the ICR in the Metal Cans Docket (Docket ID No. EPA–HQ–OAR–2017–0684), and it is briefly summarized here.

As part of the RTR for the Surface Coating of Metal Cans NESHAP, the EPA is not proposing to revise the emission limit requirements. The EPA is proposing to revise the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart KKKK.

Respondents/affected entities: Facilities performing surface coating of metal cans.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart KKKK).

Estimated number of respondents: In the 3 years after the amendments are final, approximately five respondents per year would be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 15 and in year 3 is one. Year 2 would have no responses.

Total estimated burden: The average annual burden to the five metal can facilities over the 3 years if the amendments are finalized is estimated to be 54 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 23 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the metal can facilities is $6,200 in labor costs in the first 3 years after the amendments are final. The average annual capital and operation and maintenance (O&M) costs is $15,600. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $1,090.

2. Surface Coating of Metal Coil

The ICR document that the EPA prepared has been assigned EPA ICR number 1957.09. You can find a copy of the ICR in the Metal Coil Docket (Docket ID No. EPA–HQ–OAR–2017–0685), and it is briefly summarized here.

As part of the RTR for the Surface Coating of Metal Coil NESHAP, the EPA is not proposing to revise the emission limit requirements. The EPA is proposing to revise the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart SSSS.

Respondents/affected entities: Facilities performing surface coating of metal coil.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart SSSS).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 48 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 144 and in year 3 is 69. Years 2 would have no responses.

Total estimated burden: The average annual burden to the 48 metal coil coating facilities over the 3 years if the amendments are finalized is estimated to be 738 hours (per year). The average annual burden to the Agency over the 3

years after the amendments are final is estimated to be 179 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the 48 metal coil coating facilities is $85,000 in labor costs and $186,000 in capital and O&M costs in the first 3 years after the amendments are final. The average annual Agency cost over the first 3 years after the amendments are final is estimated to be $8,530.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the dockets identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than July 5, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The annualized costs associated with the proposed requirements in this action for the affected small entities is described in section V.D. above and additional detail is provided in the economic impact memorandums associated with this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in any of the industries that would be affected by this action (metal can surface coating and metal coil surface coating). Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and C, IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of this preamble and are further documented in the Metal Cans Risk Assessment Report and the Metal Coil Risk Assessment Report in the Metal Cans Docket and the Metal Coil Docket, respectively.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. The EPA is proposing to amend the Surface Coating of Metal Coil NESHAP in this action to provide owners and operators with the option of conducting two new methods: EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography'' to measure and subtract methane emissions from measured total gaseous organic mass emissions as carbon, and ASTM Method D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products.'' We are proposing to add these two standards to the Surface Coating of Metal Coil NESHAP only, as these methods are already provided in the Surface Coating of Metal Cans NESHAP.

The EPA is also proposing to amend the Surface Coating of Metal Cans NESHAP to update three ASTM test methods and amend the Surface Coating of Metal Coil NESHAP to update two ASTM test methods. We are proposing to update ASTM Method D1475–90, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' in the Surface Coating of Metal Cans NESHAP by incorporating by reference ASTM Method D1475–13. The updated version, ASTM Method D1475–13 clarifies units of measure and reduces the number of determinations required. We are proposing to update ASTM Method D2697–86 (1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' in both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP by incorporating by reference ASTM D2697–03 (2014), which is the updated version of the previously approved method. We are also proposing to update ASTM Method D6093–97 (2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer,'' in both the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP by incorporating by reference ASTM D6093–97 (2016), which is the updated version of the previously approved method. ASTM D2697–03 (2014) is a test method that can be used to determine the volume of nonvolatile matter in clear and pigmented coatings and ASTM D6093–97 (2016) is a test method that can be used to determine the percent volume of nonvolatile matter in clear and pigmented coatings.

For the Surface Coating of Metal Cans NESHAP and the Surface Coating of Metal Coil NESHAP, the EPA proposes to incorporate by reference the following VCS as an alternative to EPA Method 24 for the determination of the volatile matter content in surface coatings:

- ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings.'' This test method allows for more accurate results for multi-component chemical resistant coatings.

For the Surface Coating of Metal Cans and the Surface Coating of Metal Coil NESHAP, the EPA proposes to incorporate by reference the following VCS for the determination of the specific gravity of halogenated organic solvents in surface coatings:

- ASTM D2111–10 (2015), ''Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their

Admixtures'' (corrected to a standard temperature). This test method allows measurement of specific gravity at different temperatures that are chosen by the analyst.

The ASTM standards are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *http://www.astm.org/.*

The EPA is not proposing ASTM D1963–85 (1996), ''Standard Test Method for Specific Gravity of Drying Oils, Varnishes, Resins, and Related Materials at 25/25 C,'' as an alternative for the determination of the specific gravity because ASTM has withdrawn the method without replacement. The EPA is also not proposing CARB Method 310, ''Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products,'' as an alternative to EPA Method 24 because the EPA has approved the method only for consumer products and aerosol coatings, which do not apply to the rulemakings or source categories addressed in this action.

Although we identified another 21 VCS for the Surface Coating of Metal Cans and another 20 VCS for the Surface Coating of Metal Coil as being acceptable alternatives for methods included in these rules, we are not proposing to add these VCS in these rulemakings. See the memoranda titled *Voluntary Consensus Standard Results for Surface Coating of Metal Cans,* August 16, 2018, and *Voluntary Consensus Standard Results for Surface Coating of Metal Coil,* August 16, 2018, in the Metal Cans Docket and the Metal Coil Docket, respectively, for the reasons for these determinations.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

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

The EPA believes that this action does *not* have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in sections IV.A.1 and 2 and sections IV.B.1 and 2 of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations,* May 2018, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations,* May 2018, available in the Metal Cans Docket and the Metal Coil Docket, respectively.

As discussed in sections IV.A.1 and IV.B.1 of this preamble, we performed a demographic analysis for each source category, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 km and within 5 km). In this analysis, we evaluated the distribution of HAP-related cancer risks and noncancer hazards from the Surface Coating of Metal Cans and the Surface Coating of Metal Coil source categories across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

The results of the Surface Coating of Metal Cans source category demographic analysis indicate that approximately 700 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. None of the percentages of the at-risk populations are higher than their respective nationwide percentages.

The proximity results (irrespective of risk) indicate that the population percentages for six demographic categories located within 5 km of metal can coating facilities are higher than their respective nationwide percentages.

The results of the Surface Coating of Metal Coil source category demographic analysis indicate that emissions from the source category expose approximately 19,000 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''African American,'' and ''Below the Poverty Level.''

The proximity results (irrespective of risk) indicate that the population percentages for the ''Below the Poverty Level'' demographic category within 5 km of metal coil coating facilities and the ''African American'' demographic category within 50 km of metal coil coating facilities are slightly higher than their respective nationwide percentages.

We do not expect this proposal to achieve significant reductions in HAP emissions. The EPA anticipates that this action does *not* have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not significantly affect the level of protection provided to human health or the environment. The documentation for this decision is contained in section IV of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Cans Source Category Operations,* May 2018, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Coil Source Category Operations,* May 2018, which are available in the Metal Cans and Metal Coil Dockets, respectively.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Surface coating of metal cans, Surface coating of metal coil, Reporting and recordkeeping requirements, Appendix A.

Dated: May 2, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraphs (h)(13), (21), (26), (29), (30), (78) and (79) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(13) ASTM Method D1475–13, Standard Test Method for Density of

Liquid Coatings, Inks, and Related Products, approved November 1, 2013, IBR approved for §§ 63.3521(c), 63.3531(c), 63.4141(b) and (c), 63.4741(b) and (c), 63.4751(c), 63.4941(b) and (c), and 63.5160(c).

* * * * *

(21) ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, approved June 1, 2015, IBR approved for §§ 63.3531(c), 63.4141(b) and (c), 63.4741(a), and 63.5160(c).

* * * * *

(26) ASTM D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3521(a), 63.3541(i)(3), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4741(a), 63.4941(a) and (b), 63.4961(j), and 63.5160(b).

* * * * *

(29) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(b), and 63.4941(b).

(30) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.5160(c).

* * * * *

(78) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3161 and 63.3941.

(79) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, Approved December 1, 2016, IBR approved for §§ 63.3521(b), 63.4141(b), 63.4741(a) and (b), 63.4941(b), and 63.5160(c).

* * * * *

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

■ 3. Section 63.3481 is amended by revising paragraph (c)(5) to read as follows:

§ 63.3481 Am I subject to this subpart?

(c) * * *

(5) Surface coating of metal pails, buckets, and drums. Subpart MMMM of this part covers surface coating of all miscellaneous metal parts and products not explicitly covered by another subpart.

■ 4. Section 63.3492 is amended by revising paragraph (b) to read as follows:

§ 63.3492 What operating limits must I meet?

* * * * *

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3541(i), you must meet the operating limits specified in Table 4 to this subpart. Those operating limits apply to the emission capture and control systems for the coating operation(s) used for purposes of complying with this subpart. You must establish the operating limits during the performance tests required in § 63.3540 or § 63.3550 according to the requirements in § 63.3546 or § 63.3556. You must meet the operating limits established during the most recent performance tests required in § 63.3540 or § 63.3550 at all times after they have been established during the performance test.

* * * * *

■ 5. Section 63.3500 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 63.3500 What are my general requirements for complying with this subpart?

(a) * * *

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3491(a) and (b), must be in compliance with the applicable emission limit in § 63.3490 at all times.

* * * * *

(b) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], at all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], if your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the SSMP is not required.

■ 6. Section 63.3511 is amended by:

■ a. Revising paragraphs (a)(4), (a)(5) introductory text, (a)(5)(i), and (a)(5)(iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraph (a)(7) introductory text, and paragraphs (a)(7)(iii), (a)(7)(vi) through (viii), (a)(7)(x), and (a)(7)(xiii) and (xiv);

■ f. Adding paragraph (a)(7)(xv);

■ g. Revising paragraph (a)(8) introductory text, and paragraphs (a)(8)(i), (a)(8)(iv) through (vi), (a)(8)(viii), and (a)(8)(xi) and (xii);

■ f. Adding paragraph (a)(8)(xiii);

■ g. Revising paragraph (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.3511 What reports must I submit?

(a) * * *

(4) *No deviations.* If there were no deviations from the emission limits,

operating limits, or work practice standards in §§ 63.3490, 63.3492, and 63.3493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner used that contained organic HAP, and the date, time, and duration each was used.

* * * * *

(iv) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation (including unknown cause, if applicable).

(v) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3500(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations, date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3500(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.3490 or the applicable operating limit(s) in Table 4 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. That includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (a)(7)(xiv), and (a)(7)(xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.3493(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vi) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(vii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8). On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the number of deviations from an operating limit in Table 4 to this subpart and, for each deviation, the date, time, and duration of each deviation; the date, time, and duration of any bypass of the add-on control device.

* * * * *

(x) Before [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from the work practice standards, a description of the deviation; the date, and time period of the deviation; and

the actions you took to correct the deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable.

(xiv) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from an emission limit in § 63.3490 or an operating limit in Table 4 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.3500(b).

(xv) On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3490 or operating limit in Table 4 to this subpart, and a description of the method used to estimate the emissions.

(8) *Deviations: Control efficiency/outlet concentration option.* If you used the control efficiency/outlet concentration option, and there was a deviation from the applicable emission limit in § 63.3490 or the applicable operating limit(s) in Table 4 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the semiannual compliance report must specify the number of deviations during the compliance period and contain the information in paragraphs (a)(8)(i) through (x), (xii), and (xiii) of this section. If you use the control efficiency/outlet concentration option and there was a deviation from the applicable work practice standards in § 63.3493(b), the semiannual compliance report must contain the information in paragraph (a)(8)(xi) of this section.

(i) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(iv) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(v) For each instance that the CPMS was out of control as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out of control; the cause (including unknown cause) for the CPMS being out of control; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(vi) Before [date 181 days after date of publication of final rule in the **Federal Register**], the date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the date, time, and duration of each deviation from an operating limit in Table 4 to this subpart; and the date, time, and duration of any bypass of the add-on control device.

* * * * *

(viii) Before [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xi) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from the work practice standards in § 63.3493(b), the number of deviations, and, for each deviation, the information in paragraphs (a)(8)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3500(b).

(B) The description required in paragraph (a)(8)(xi)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xii) Before [date 181 days after date of publication of final rule in the **Federal Register**], a statement of the cause of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for deviations from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xiii) On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limit in § 63.3490 or operating limit in Table 4 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3490, and a description of the method used to estimate the emissions.

* * * * *

(c) *Startup, shutdown, malfunction reports.* Before [date 181 days after date of publication of final rule in the **Federal Register**], if you used the

emission rate with add-on controls option or the control efficiency/outlet concentration option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must submit the results of the performance test required in §§ 63.3540 and 63.3550 following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test in portable document format (PDF) using the attachment module of the ERT.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(e) On and after [date 181 days after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.3510(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in PDF. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) On and after [date 181 days after date of publication of final rule in the **Federal Register**], or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(g) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs,

or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 7. Section 63.3512 is amended by revising paragraphs (i), (j) introductory text, and (j)(1) and (2) to read as follows:

§ 63.3512 What records must I keep?

* * * * *

(i) Before [date 181 days after date of publication of final rule in the **Federal Register**], a record of the date, time, and duration of each deviation. On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limitation reported under § 63.3511(a)(5) through (8), a record of the information specified in paragraphs (i)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.3511(a)(5) through (8).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3511(a)(5) through (8).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3490 or any applicable operating limit in Table 4 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3511(a)(5) through (8).

(4) A record of actions taken to minimize emissions in accordance with § 63.3500(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(j) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must also keep the records specified in paragraphs (j)(1) through (8) of this section.

(1) Before [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], a record of whether the deviation occurred during a period of startup, shutdown, or malfunction is not required.

(2) Before [date 181 days after date of publication of final rule in the **Federal Register**], the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after [date 181 days after date of publication of final rule in the **Federal Register**], the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction are not required.

* * * * *

■ 8. Section 63.3513 is amended by revising paragraph (a) to read as follows:

§ 63.3513 In what form and for how long must I keep my records?

(a) Your records must be kept in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after [date 181 days after date of publication of final rule in the **Federal Register**], any records required to be maintained by this subpart that are in reports that were submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

■ 9. Section 63.3521 is amended by revising paragraphs (a)(1)(i), (a)(2), (a)(4), (b)(1), and (c) to read as follows:

§ 63.3521 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 8 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 8 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 8 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 8 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

(b) * * *

(1) *ASTM Method D2697–03 (2014) or D6093–97 (2016).* You may use ASTM Method D2697-*03* (2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' (incorporated by reference, *see* § 63.14)

or D6093–97 (2016), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids. If these values cannot be determined using these methods, the owner/operator may submit an alternative technique for determining the values for approval by the Administrator.

* * * * *

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–13 Standard Test Method for Density of Liquid Coatings, Inks, and Related Products (incorporated by reference, see § 63.14) or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–13 test results and the supplier's or manufacturer's information, the test results will take precedence.

* * * * *

■ 10. Section 63.3531 is amended by revising paragraph (c) to read as follows:

§ 63.3531 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(c) *Determine the density of each material.* Determine the density of each coating and thinner used during each month from test results using ASTM Method D1475–13 or ASTM D2111–10 (2015) (both incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–13 or ASTM D2111–10 (2015) test results and such other information sources, the test results will take precedence.

* * * * *

■ 11. Section 63.3540 is amended by revising the section heading and paragraphs (a)(1), (a)(4), and (b)(1) to read as follows:

§ 63.3540 By what date must I conduct performance tests and initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3492 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publication of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70, or 40 CFR part 71, and have conducted a performance test on or after [date 2 years before date of publication of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3541(i).

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the compliance date specified in § 63.3483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3492 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publication of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70, or 40 CFR part 71, and have conducted a performance test on or after [date 2 years before date of publication of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

* * * * *

■ 12. Section 63.3541 is amended by revising paragraphs (h) introductory text and (i)(3) to read as follows:

§ 63.3541 How do I demonstrate initial compliance?

* * * * *

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the

organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3542(c) or (d) occurs in the controlled coating operation, you must assume zero efficiency for the emission capture system and add-on control device, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data has been approved by the Administrator. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation. * * *

* * * * *

(i) * * *

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, in kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14), or an EPA approved alternative method. Alternatively, you may determine the volatile organic matter mass fraction using information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14), or an approved alternative method, the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 13. Section 63.3542 is amended by revising paragraphs (f) and (h) to read as follows:

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) As part of each semiannual compliance report required in § 63.3511, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.3490, the operating limits in § 63.3492, and the work practice standards in § 63.3493, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490, and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

* * * * *

(h) Before [date 181 days after date of publication of final rule in the **Federal Register**], consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e). On and after [date 181 days after date of publication of final rule in the **Federal Register**], deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3500(b).

* * * * *

■ 14. Section 63.3543 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.3543 What are the general requirements for performance tests?

(a) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.3540 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.3540 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 15. Section 63.3544 is amended by revising the introductory text to read as follows:

§ 63.3544 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of each performance test required by § 63.3540.

* * * * *

■ 16. Section 63.3545 is amended by revising the introductory text, paragraph (b) introductory text, and paragraphs (b)(1) through (4) to read as follows:

§ 63.3545 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance tests required by § 63.3540. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A–7 to 40 CFR part 60 as specified in paragraphs (b)(1) through (5) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-control device is not an oxidizer.

(4) You may use Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 17. Section 63.3546 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1), (e)(1) and (2), (f)(1) through (3), and (f)(5) and (6) to read as follows:

§ 63.3546 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During performance tests required by § 63.3540 and described in §§ 63.3543, 63.3544, and 63.3545, you must establish the operating limits required by § 63.3492 unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

* * * * *

(d) * * *

(1) During performance tests, you must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

* * * * *

(e) * * *

(1) During performance tests, monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) * * *

(1) During performance tests, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During each performance test, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in revolutions per minute (rpm), power in amps, static pressure, or flow rate.

* * * * *

(5) During each performance test, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(6) For each performance test, use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

* * * * *

■ 18. Section 63.3547 is amended by revising paragraphs (a)(4) and (5), (a)(7), and (c)(3) introductory text to read as follows:

§ 63.3547 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment. On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must maintain the CPMS at all times in accordance with § 63.3500(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3500(b).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor

maintenance or careless operation are not malfunctions. Before [date 181 days after date of publication of final rule in the **Federal Register**], any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after [date 181 days after date of publication of final rule in the **Federal Register**], except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (ii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 19. Section 63.3550 is amended by revising the section heading and paragraphs (a)(1), (a)(4), and (b)(1) to read as follows:

§ 63.3550 By what date must I conduct performance tests and initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. You must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to §§ 63.3553, 63.3554, and 63.3555 and establish the operating limits required by § 63.3492.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3492 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publication of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70, or 40 CFR part 71, and have conducted a performance test on or after [date 2 years before date of publication of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section on the date you complete the performance tests.

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3492 within 5 years following the previous performance test. You must conduct the first periodic performance test before [date 3 years after date of publication of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70, or 40 CFR part 71, and have conducted a performance test on or after [date 2 years before date of publication of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

* * * * *

■ 20. Section 63.3552 is amended by revising paragraph (g) to read as follows:

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(g) Before [date 181 days after date of publication of final rule in the **Federal Register**], consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). On and after [date 181 days after date of publication of final rule in the **Federal Register**] deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3500(b).

* * * * *

■ 21. Section 63.3553 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.3553 What are the general requirements for performance tests?

(a) Before [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.3550 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after [date 181 days after date of publication of final rule in the **Federal Register**], you must conduct each performance test required by § 63.3550 according to the requirements in this section unless you

obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation(s). Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 22. Section 63.3555 is amended by revising the introductory text, paragraph (b) introductory text, and paragraphs (b)(1) through (4) to read as follows:

§ 63.3555 How do I determine the outlet THC emissions and add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine either the outlet THC emissions or add-on control device emission destruction or removal efficiency as part of the performance tests required by § 63.3550. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously using either Method 25 or 25A of appendix A–7 to 40 CFR part 60 as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be more than 50 ppm at the control device outlet.

(2) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 23. Section 63.3556 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1), (e)(1) and (2), (f)(1) through (3), and (f)(5) and (6) to read as follows:

§ 63.3556 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance tests required by § 63.3550 and described in §§ 63.3553, 63.3554, and 63.3555, you must establish the operating limits required by § 63.3492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. That average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature at the inlet to the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during each performance test to calculate and record the average temperature at the inlet to the catalyst bed during the performance test. That is the minimum operating limit for your catalytic oxidizer.

* * * * *

(d) * * *

(1) You must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following performance tests.

* * * * *

(e) * * *

(1) During performance tests, monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) * * *

(1) During performance tests, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During performance tests, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in rpm, power in amps, static pressure, or flow rate.

* * * * *

(5) During performance tests, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of a performance test.

(6) For each performance test, use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed

may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

* * * * *

■ 24. Section 63.3557 is amended by revising paragraphs (a)(4) and (5), (a)(7), and (c)(3) introductory text to read as follows:

§ 63.3557 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) You must maintain the CPMS at all times in accordance with § 63.3500(b) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3500(b) that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before [date 181 days after date of publication of final rule in the **Federal Register**], any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after [date 181 days after date of publication of final rule in the **Federal Register**], except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (ii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 25. Section 63.3561 is amended by removing the definition for ''*Deviation*'' and adding definitions for ''*Deviation,* before'' and ''*Deviation,* on and after'' in alphabetical order to read as follows:

§ 63.3561 What definitions apply to this subpart?

* * * * *

Deviation, before [date 181 days after date of publication of final rule in the **Federal Register**], means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

Deviation, on and after [date 181 days after date of publication of final rule in the **Federal Register**], means any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

■ 26. Table 5 to subpart KKKK of part 63 is revised to read as follows:

Table 5 to Subpart KKKK of Part 63—Applicability of General Provisions to Subpart KKKK

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	
§ 63.1(a)(6)	Source Category Listing	Yes.	
§ 63.1(a)(10)–(12)	Timing and Overlap Clarifications	Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	Applicability to subpart KKKK is also specified in § 63.3481.
§ 63.1(b)(3)	Applicability Determination Recordkeeping.	Yes.	
§ 63.1(c)(1)	Applicability after Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart KKKK.
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3561.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes.	

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.3500(b) for general duty requirement.
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(1)	Compliance Except during Start-up, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance with Opacity/Visible Emission Standards.	No	Subpart KKKK does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
§ 63.6(i)(16)	Compliance Extensions and Administrator's Authority.	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3543, 63.3544, 63.3545, 63.3554, and 63.3555.
§ 63.7(a)(2) except (a)(2)(i)–(viii)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Sections 63.3540 and 63.3550 specify the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required by the Administrator.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1)	Conduct of Performance Tests	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See §§ 63.3543 and 63.3553.
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §§ 63.3547 and 63.3557.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart KKKK does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in §§ 63.3547 and 63.3557.
§ 63.8(c)(4)	CMS	No	Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Sections 63.3547 and 63.3557 specify the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting.	No	Section 63.3511 requires reporting of CMS out of control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No.	
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Section 63.8(f)(6) provisions are not applicable because subpart KKKK does not require CEMS.
§ 63.8(g)	Data Reduction	No	Sections 63.3542, 63.3547, 63.3552 and 63.3557 specify monitoring data reduction.
§ 63.9(a)	Notification Applicability	Yes.	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes.	
§ 63.9(b)(4)(i), (b)(4)(v), (b)(5)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c)	Request for Extension of Compliance.	Yes.	
§ 63.9(d)	Special Compliance Requirement Notification.	Yes.	

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.9(e)	Notification of Performance Test ..	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/ Opacity Test.	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS.	No.	
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	Section 63.3510 specifies the dates for submitting the notification of compliance status.
§ 63.9(h)(5)–(6)	Clarifications	Yes.	
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information ...	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3512 and 63.3513.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.3512(i).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.3512(i)(4) for a record of actions taken to minimize emissions duration a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.3512(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2) (vii)–(xii)	Records	Yes.	
§ 63.10(b)(2) (xiii)		No.	
§ 63.10(b)(2) (xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(5)–(6)		Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	See § 63.3512(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the Startup, Shutdown, and Malfunction Plan.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3511.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3511(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart KKKK does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources with Compliance Extensions.	Yes.	

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.10(d)(5)	Startup, Shutdown, Malfunction Reports.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.3511(a)(7) and (8).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No.	
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3511(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart KKKK does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart KKKK does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13(a)	Addresses	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.13(b)	Submittal to State Agencies	Yes.	
§ 63.13(c)	Submittal to State Agencies	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No unless the state requires the submittal via CEDRI, on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 27. Table 8 to subpart KKKK of part 63 is added to read as follows:

TABLE 8 TO SUBPART KKKK OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7

TABLE 8 TO SUBPART KKKK OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

■ 28. Section 63.5090 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 63.5090 Does this subpart apply to me?

(a) The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a coil coating line is operated, except as provided in paragraphs (b) and (e) of this section.

* * * * *

(e) This subpart does not apply to the application of incidental markings (including letters, numbers, or symbols) that are added to bare metal coils and that are used for only product identification or for product inventory control. The application of letters, numbers, or symbols to a coated metal coil is considered a coil coating process and part of the coil coating affected source.

■ 29. Section 63.5110 is amended by removing the definition for ''*Deviation*'' and adding definitions for ''*Deviation,* before'' and ''*Deviation,* on and after'' in alphabetical order to read as follows:

§ 63.5110 What special definitions are used in this subpart?

* * * * *

Deviation, before [date 181 days after date of publication of final rule in the **Federal Register**], means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Deviation, on and after [date 181 days after date of publication of final rule in the **Federal Register**], means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

■ 30. Section 63.5121 is amended by revising paragraph (a) to read as follows:

§ 63.5121 What operating limits must I meet?

(a) Except as provided in paragraph (b) of this section, for any coil coating line for which you use an add-on control device, unless you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.5170(e)(1), you must meet the applicable operating limits specified in Table 1 to this subpart. You must establish the operating limits during performance tests according to the requirements in § 63.5160(d)(3) and Table 1 to § 63.5160. You must meet the operating limits established during the most recent performance test required in § 63.5160 at all times after you establish them.

* * * * *

■ 31. Section 63.5130 is amended by revising paragraph (a) to read as follows:

§ 63.5130 When must I comply?

(a) For an existing affected source, the compliance date is June 10, 2005.

* * * * *

■ 32. Section 63.5140 is amended by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraph (b) as (c); and

■ c. Adding paragraph (b).

The revision and addition read as follows:

§ 63.5140 What general requirements must I meet to comply with the standards?

(a) Before [date 181 days after publication of final rule in the **Federal Register**], you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 to this subpart at all times, except during periods of start-up, shutdown, and malfunction of any capture system and control device used to comply with this subpart. On and after [date 181 days after publication of final rule in the **Federal Register**] you must be in compliance with the applicable emission standards in § 63.5120 and the operating limits in Table 1 to this subpart at all times. If you are complying with the emission standards of this subpart without the use of a capture system and control device, you must be in compliance with the standards at all times.

(b) Before [date 181 days after publication of final rule in the **Federal Register**], you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1). On and after [date 181 days after publication of final rule in the **Federal Register**], at all times, you must operate and maintain your affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

■ 33. Section 63.5150 is amended by revising paragraph (a) introductory text, paragraph (a)(4)(i), and paragraph (b) to read as follows:

§ 63.5150 If I use a control device to comply with the emission standards, what monitoring must I do?

* * * * *

(a) To demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device required to comply with § 63.5120 following the date on which the initial performance test of the capture system and control device is completed. You must install and operate the monitoring equipment as specified in paragraphs (a)(1) through (4) of this section. On and after [date 181 days after publication of final rule in the **Federal Register**], you must also maintain the monitoring equipment at all times in accordance with § 63.5140(b) and keep the necessary parts readily available for routine repairs of the monitoring equipment.

* * * * *

(4) * * *

(i) The monitoring plan must identify the operating parameter to be monitored to ensure that the capture efficiency measured during compliance tests is maintained, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures.

* * * * *

(b) If an operating parameter monitored in accordance with paragraphs (a)(3) and (4) of this section is out of the allowed range specified in Table 1 to this subpart it will be considered a deviation from the operating limit.

■ 34. Section 63.5160 is amended by revising table 1 and paragraphs (b)(1)(i), (b)(2), (b)(4), (c), (d) introductory text, (d)(1) introductory text, (d)(1)(vi) introductory text, (d)(1)(vii), (d)(2), (d)(3) introductory text, (d)(3)(i)(A), (d)(3)(ii)(D) introductory text, and (e) introductory text to read as follows:

§ 63.5160 What performance tests must I complete?

TABLE 1 TO § 63.5160—REQUIRED PERFORMANCE TESTING SUMMARY

If you control HAP on your coil coating line by:	You must:
1. Limiting HAP or Volatile matter content of coatings.	Determine the HAP or volatile matter and solids content of coating materials according to the procedures in § 63.5160(b) and (c).
2. Using a capture system and add-on control device.	Except as specified in paragraph (a) of this section, conduct an initial performance test within 180 days of the applicable compliance date in § 63.5130, and conduct periodic performance tests within 5 years following the previous performance test, as follows: Conduct the first periodic performance test before [date 3 years after date of publication of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70, or 40 CFR part 71, and have conducted a performance test on or after [date 2 years before date of publication of final rule in the **Federal Register**]; thereafter, conduct a performance test no later than 5 years following the previous performance test. For each performance test: (1) For each capture and control system, determine the destruction or removal efficiency of each control device according to § 63.5160(d) and the capture efficiency of each capture system according to § 63.5160(e), and (2) confirm or re-establish the operating limits.

* * * * *

(b) * * *

(1) * * *

(i) Count only those organic HAP in Table 3 to this subpart that are measured to be present at greater than or equal to 0.1 weight percent and greater than or equal to 1.0 weight percent for other organic HAP compounds.

* * * * *

(2) *Method 24 in appendix A–7 of part 60.* For coatings, you may determine the total volatile matter content as weight fraction of nonaqueous volatile matter and use it as a substitute for organic HAP, using Method 24 in appendix A–7 of part 60. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14). The determination of total volatile matter content using a method specified in this paragraph (b)(2) or as provided in paragraph (b)(3) of this section may be performed by the manufacturer of the coating and the results provided to you.

* * * * *

(4) *Formulation data.* You may use formulation data provided that the information represents each organic HAP in Table 3 to this subpart that is present at a level equal to or greater than 0.1 percent and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used, weighted by the mass fraction of each raw material used in the material. Formulation data may be provided to you by the manufacturer of the coating material. In the event of any inconsistency between test data obtained with the test methods specified in paragraphs (b)(1) through (3) of this section and formulation data, the test data will govern.

(c) *Solids content and density.* You must determine the solids content and the density of each coating material applied. You may determine the volume solids content using ASTM D2697–03(2014) Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings (incorporated by reference, see § 63.14) or ASTM D6093–97 (2016) Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer (incorporated by reference, see § 63.14), or an EPA approved alternative method. You must determine the density of each coating using ASTM D1475–13 Standard Test Method for Density of Liquid Coatings, Inks, and Related Products (incorporated by reference, see § 63.14) or ASTM D2111–10 (2015) Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures (incorporated by reference, see § 63.14). The solids determination using ASTM D2697–03(2014) or ASTM D6093–97 (2016) and the density determination using ASTM D1475–13 or ASTM 2111–10 (2015) may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on formulation data provided by material providers to determine the volume solids. In the event of any inconsistency between test data obtained with the ASTM test methods specified in this section and formulation data, the test data will govern.

(d) *Control device destruction or removal efficiency.* If you are using an add-on control device, such as an oxidizer, to comply with the standard in § 63.5120, you must conduct performance tests according to Table 1 to § 63.5160 to establish the destruction or removal efficiency of the control device or the outlet HAP concentration achieved by the oxidizer, according to the methods and procedures in paragraphs (d)(1) and (2) of this section. During performance tests, you must establish the operating limits required by § 63.5121 according to paragraph (d)(3) of this section.

(1) Performance tests conducted to determine the destruction or removal efficiency of the control device must be performed such that control device inlet and outlet testing is conducted simultaneously. To determine the outlet organic HAP concentration achieved by the oxidizer, only oxidizer outlet testing must be conducted. The data must be reduced in accordance with the test methods and procedures in paragraphs (d)(1)(i) through (ix).

* * * * *

(vi) Method 25 or 25A in appendix A–7 of part 60 is used to determine total gaseous non-methane organic matter concentration. You may use Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon. Use the same test method for both the inlet and outlet measurements, which must be conducted simultaneously. You must submit notification of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7 (b). You must use Method 25A if any of the conditions described in paragraphs (d)(1)(vi)(A) through (D) of this section apply to the control device.

* * * * *

(vii) Each performance test must consist of three separate runs, except as provided by § 63.7(e)(3); each run must be conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic matter concentrations and mass flow rates, the average of the results of all runs will apply. If you are demonstrating compliance with the outlet organic HAP concentration limit in § 63.5120(a)(3), only the average

outlet volatile organic matter concentration must be determined.

* * * * *

(2) You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test. Before [date 181 days after publication of final rule in the **Federal Register**], operations during periods of start-up, shutdown, and malfunction will not constitute representative conditions for the purpose of a performance test. On and after [date 181 days after publication of final rule in the **Federal Register**], you must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of start-up, shutdown, or nonoperation do not constitute representative conditions for the purpose of a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(3) *Operating limits.* If you are using a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance to comply with the requirements in § 63.5120, you must establish the applicable operating limits required by § 63.5121. These operating limits apply to each capture system and to each add-on emission control device that is not monitored by CEMS, and you must establish the operating limits during performance tests required by paragraph (d) of this section according to the requirements in paragraphs (d)(3)(i) through (iii) of this section.

(i) * * *

(A) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

* * * * *

(ii) * * *

(D) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (d)(3)(ii)(C) of this section. The plan must address, at a minimum, the elements specified in paragraphs (d)(3)(ii)(D)(*1*)–(*3*) of this section.

* * * * *

(e) *Capture efficiency.* If you are required to determine capture efficiency to meet the requirements of § 63.5170(e)(2), (f)(1) and (2), (g)(2) through (4), or (i)(2) and (3), you must determine capture efficiency using the procedures in paragraph (e)(1), (2), or (3) of this section, as applicable.

* * * * *

■ 35. Section 63.5170 is amended by revising table 1 and paragraphs (c)(1) and (2), (c)(4) introductory text, (e)(2) introductory text, (f)(1) introductory text, (f)(2), (g)(2) introductory text, (g)(3) introductory text, (g)(4) introductory text, Equation 11 of paragraph (h)(6), (i) introductory text, and (i)(1) to read as follows:

§ 63.5170 How do I demonstrate compliance with the standards?

* * * * *

TABLE 1 TO § 63.5170—COMPLIANCE DEMONSTRATION REQUIREMENTS INDEX

If you choose to demonstrate compliance by:	Then you must demonstrate that:
1. Use of ''as purchased'' compliant coatings	a. Each coating material used during the 12-month compliance period does not exceed 0.046 kg HAP per liter solids, as purchased. Paragraph (a) of this section.
2. Use of ''as applied'' compliant coatings	a. Each coating material used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraphs (b)(1) of this section; or b. Average of all coating materials used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (b)(2) of this section.
3. Use of a capture system and control device	Overall organic HAP control efficiency is at least 98 percent on a monthly basis for individual or groups of coil coating lines; or overall organic HAP control efficiency is at least 98 percent during performance tests conducted according to Table 1 to § 63.5170 and operating limits are achieved continuously for individual coil coating lines; or oxidizer outlet HAP concentration is no greater than 20 ppmv and there is 100 percent capture efficiency during performance tests conducted according to Table 1 to § 63.5170 and operating limits are achieved continuously for individual coil coating lines. Paragraph (c) of this section.
4. Use of a combination of compliant coatings and control devices and maintaining an acceptable equivalent emission rate.	Average equivalent emission rate does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (d) of this section.

* * * * *

(c) * * *

(1) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (3) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (e) of this section when emissions from the affected source are controlled by one or more solvent recovery devices.

(2) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (3) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (f) of this section when emissions are controlled by one or more oxidizers.

* * * * *

(4) The method of limiting organic HAP emissions to the level specified in § 63.5120(a)(3) is the installation and operation of a PTE around each work station and associated curing oven in the coating line and the ventilation of all organic HAP emissions from each PTE to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv on a dry basis. An enclosure that meets the requirements in § 63.5160(e)(1) is considered a PTE. Compliance of the oxidizer with the outlet organic HAP concentration limit is demonstrated either through continuous emission monitoring according to paragraph (c)(4)(ii) of this section or through performance tests according to the requirements of § 63.5160(d) and Table 1 to § 63.5160. If this method is selected, you must meet the requirements of paragraph (c)(4)(i) of

this section to demonstrate continuing achievement of 100 percent capture of organic HAP emissions and either paragraph (c)(4)(ii) or paragraph (c)(4)(iii) of this section, respectively, to demonstrate continuous compliance with the oxidizer outlet organic HAP concentration limit through continuous emission monitoring or continuous operating parameter monitoring:

* * * * *

(e) * * *

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors to demonstrate recovery efficiency, conduct performance tests of capture efficiency and volumetric flow rate, and continuously monitor a site specific operating parameter to ensure that capture efficiency and volumetric flow rate are maintained following the procedures in paragraphs (e)(2)(i) through (xi) of this section:

* * * * *

(f) * * *

(1) *Continuous monitoring of capture system and control device operating parameters.* Demonstrate compliance through performance tests of capture efficiency and control device efficiency and continuous monitoring of capture system and control device operating parameters as specified in paragraphs (f)(1)(i) through (xi) of this section:

* * * * *

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors, conduct performance tests of capture efficiency, and continuously monitor a site specific operating parameter to ensure that capture efficiency is maintained. Compliance must be demonstrated in accordance with paragraph (e)(2) of this section.

(g) * * *

(2) *Solvent recovery system using performance test and continuous monitoring compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of performance testing of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(2)(i) and (ii) of this section:

* * * * *

(3) *Oxidizer using performance tests and continuous monitoring of operating parameters compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through performance tests of capture efficiency, control device efficiency, and continuous monitoring of capture system and control device operating parameters, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(3)(i) through (iii) of this section:

* * * * *

(4) *Oxidizer using continuous emission monitoring compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through capture efficiency testing, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements in paragraphs (g)(4)(i) and (ii) of this section:

* * * * *

(h) * * *

(6) * * *

$$He = \sum_{A=1}^{w_i}\left[\left(\sum_{i=1}^{p} M_{ci}C_{hi} + \sum_{j=1}^{q} M_{cj}C_{hj}\right)(1 - DRE_k CE_A)\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \quad \text{(Eq. 11)}$$

* * * * *

(i) *Capture and control system compliance demonstration procedures using a CPMS for a coil coating line.* If you use an add-on control device, to demonstrate compliance for each capture system and each control device through performance tests and continuous monitoring of capture system and control device operating parameters, you must meet the requirements in paragraphs (i)(1) through (3) of this section.

(1) Conduct performance tests according to the schedule in Table 1 to § 63.5160 to determine the control device destruction or removal efficiency, DRE, according to § 63.5160(d) and Table 1 to § 63.5160.

* * * * *

■ 36. Section 63.5180 is amended by:

■ a. Revising paragraphs (f) introductory text and (f)(1);

■ b. Removing and reserving paragraph (f)(2);

■ c. Revising paragraphs (g)(2)(v), (h) introductory text, (h)(2) and (3);

■ d. Adding paragraph (h)(4); and

■ e. Revising paragraphs (i) introductory text, (i)(1) through (4), (i)(6), and (i)(9).

The revisions and addition read as follows:

§ 63.5180 What reports must I submit?

* * * * *

(f) Before [date 181 days after publication of final rule in the **Federal Register**], you must submit start-up, shutdown, and malfunction reports as specified in § 63.10(d)(5) if you use a control device to comply with this subpart.

(1) Before [date 181 days after publication of final rule in the **Federal Register**], if your actions during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6 (e)(3) and required before [date 181 days after publication of final rule in the **Federal Register**], you must state such information in the report. The start-up, shutdown, or malfunction report will consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that will be submitted to the Administrator. Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (g) of this section. The startup, shutdown, and malfunction plan and start-up, shutdown, and malfunction report are no longer required on and after [date 181 days after publication of final rule in the **Federal Register**].

* * * * *

(g) * * *

(2) * * *

(v) A statement that there were no deviations from the applicable emission

limit in § 63.5120 or the applicable operating limit(s) established according to § 63.5121 during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(h) You must submit, for each deviation occurring at an affected source where you are not using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section and the information in paragraphs (h)(1) through (4) of this section:

* * * * *

(2) Before [date 181 days after publication of final rule in the **Federal Register**], you must provide information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable, and the corrective action taken. On and after [date 181 days after publication of final rule in the **Federal Register**], you must provide information on the number, date, time, duration, and cause of deviations from an emission limit in § 63.5120 or any applicable operating limit established according to § 63.5121 (including unknown cause, if applicable) as applicable, and the corrective action taken.

(3) Before [date 181 days after publication of final rule in the **Federal Register**], you must provide information on the number, duration, and cause for continuous parameter monitoring system downtime incidents (including unknown cause other than downtime associated with zero and span and other daily calibration checks, if applicable). On and after [date 181 days after publication of final rule in the **Federal Register**], you must provide the information specified in paragraphs (h)(3)(i) and (ii) of this section.

(i) Number, date, time, duration, cause (including unknown cause), and descriptions of corrective actions taken for continuous parameter monitoring systems that are inoperative (except for zero (low-level) and high-level checks).

(ii) Number, date, time, duration, cause (including unknown cause), and descriptions of corrective actions taken for continuous parameter monitoring systems that are out of control as specified in § 63.8(c)(7).

(4) On and after [date 181 days after publication of final rule in the **Federal Register**], for each deviation from an emission limit in § 63.5120 or any applicable operating limit established according to § 63.5121, you must provide a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.5120, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.5140(b).

(i) You must submit, for each deviation from the applicable emission limit in § 63.5120 or the applicable operation limit(s) established according to § 63.5121 occurring at an affected source where you are using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section, and the information in paragraphs (i)(1) through (12) of this section:

(1) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

(2) Before [date 181 days after publication of final rule in the **Federal Register**], the date and time that each CEMS was inoperative, except for zero (low-level) and high-level checks. On and after [date 181 days after publication of final rule in the **Federal Register**], for each instance that the CEMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CEMS was inoperative; the cause (including unknown cause) for the CEMS being inoperative; and a description of corrective actions taken.

(3) Before [date 181 days after publication of final rule in the **Federal Register**], the date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8). On and after [date 181 days after publication of final rule in the **Federal Register**], for each instance that the CEMS was out-of-control, as specified in § 63.8(c)(7), the date, time, and duration that the CEMS was out-of-control; the cause (including unknown cause) for the CEMS being out-of-control; and descriptions of corrective actions taken.

(4) Before [date 181 days after publication of final rule in the **Federal Register**], the date and time that each deviation started and stopped, and whether each deviation occurred during a period of start-up, shutdown, or malfunction or during another period. On and after [date 181 days after publication of final rule in the **Federal Register**], the date, time, and duration of each deviation from an emission limit in § 63.5120. For each deviation, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.5120 to this subpart, and a description of the method used to estimate the emissions.

* * * * *

(6) Before [date 181 days after publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations during the reporting period into those that are due to start-up, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after [date 181 days after publication of final rule in the **Federal Register**], a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(9) Before [date 181 days after publication of final rule in the **Federal Register**], a brief description of the metal coil coating line. On and after [date 181 days after publication of final rule in the **Federal Register**], a list of the affected source or equipment, including a brief description of the metal coil coating line.

* * * * *

■ 37. Section 63.5181 is added to read as follows:

§ 63.5181 What are my electronic reporting requirements?

(a) Beginning no later than [date 181 days after publication of final rule in the **Federal Register**], you must submit the results of each performance test as required in § 63.5180(e) following the procedure specified in paragraphs (a)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test in portable document format (PDF)

using the attachment module of the ERT.

(3) If you claim that some of the performance test information being submitted under paragraph (a)(1) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (a)(1) of this section.

(b) Beginning on [date 181 days after publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.5180(d) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in PDF. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(c) Beginning on [date 1 year after publication of final rule in the **Federal Register**], or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in § 63.5180(g) through (i), as applicable, to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date on which the report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(d) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(e) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force

majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 38. Section 63.5190 is amended by adding paragraphs (a)(5) and (c) to read as follows:

§ 63.5190 What records must I maintain?

(a) * * *

(5) On and after [date 181 days after date of publication of final rule in the **Federal Register**], for each deviation from an emission limitation reported under § 63.5180(h) or (i), a record of the information specified in paragraphs (a)(5)(i) through (iv) of this section, as applicable.

(i) The date, time, and duration of the deviation, as reported under § 63.5180(h) and (i).

(ii) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.5180(h) and (i).

(iii) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.5120 to this subpart or any applicable operating limit established according to § 63.5121 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.5180(h) and (i).

(iv) A record of actions taken to minimize emissions in accordance with § 63.5140(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(c) Any records required to be maintained by this subpart that are in reports that were submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 39. Table 2 to subpart SSSS of part 63 is revised to read as follows:

Table 2 to Subpart SSSS of Part 63—Applicability of General Provisions to Subpart SSSS

You must comply with the applicable General Provisions requirements according to the following table:

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	
§ 63.1(a)(6)	Source Category Listing	Yes.	
§ 63.1(a)(10)–(12)	Timing and Overlap Clarifications	Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	Applicability to Subpart SSSS is also specified in § 63.5090.
§ 63.1(b)(3)	Applicability Determination Recordkeeping.	Yes.	
§ 63.1(c)(1)	Applicability after Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	Yes.	
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.5110.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes	Only total HAP emissions in terms of tons per year are required for § 63.5(d)(1)(ii)(H).
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance Requirements-Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.5130 specifies the compliance dates.
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.5130 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	General Duty to Minimize Emissions and Requirement to Correct Malfunctions As Soon As Possible.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.5140(b) for general duty requirement.
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements.	Yes.	

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP Requirements	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.6(f)(1)	SSM Exemption	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.5140(b) for general duty requirement.
§ 63.6(f)(2)–(3)	Compliance with Non-Opacity Emission Standards.	Yes.	
§ 63.6(g)	Alternative Non-Opacity Emission Standard.	Yes.	
§ 63.6(h)	Compliance with Opacity/Visible Emission Standards.	No	Subpart SSSS does not establish opacity standards or visible emission standards.
§ 63.6(i)(1)–(14), (i)(16)	Extension of Compliance and Administrator's Authority.	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)–(d) except (a)(2)(i)–(viii)	Performance Test Requirements	Yes.	
§ 63.7(e)(1)	Performance Testing	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.5160(d)(2).
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes	EPA retains approval authority.
§ 63.7(g)–(h)	Data Analysis and Waiver of Tests.	Yes.	
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes	Additional requirements for monitoring are specified in § 63.5150(a).
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart SSSS does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Operation and Maintenance of Continuous Monitoring System (CMS).	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	Section 63.5150(a) specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.5170.
§ 63.8(c)(4)–(5)	CMS Continuous Operation Procedures.	No	Subpart SSSS does not require COMS.
§ 63.8(c)(6)–(8)	CMS Requirements	Yes	Provisions only apply if CEMS are used.
§ 63.8(d)–(e)	CMS Quality Control, Written Procedures, and Performance Evaluation.	Yes	Provisions only apply if CEMS are used.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes	EPA retains approval authority.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Section 63.8(f)(6) provisions are not applicable because subpart SSSS does not require CEMS.
§ 63.8(g)	Data Reduction	No	Sections 63.5170, 63.5140, 63.5150, and 63.5150 specify monitoring data reduction.
§ 63.9(a)	Notification of Applicability	Yes.	
§ 63.9(b)(1)	Initial Notifications	Yes.	

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.9(b)(2)	Initial Notifications	Yes	With the exception that § 63.5180(b)(1) provides 2 years after the proposal date for submittal of the initial notification for existing sources.
§ 63.9(b)(4)(i), (b)(4)(v), (b)(5)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c)–(e)	Request for Extension of Compliance, New Source Notification for Special Compliance Requirements, and Notification of Performance Test.	Yes	Notification of performance test requirement applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/ Opacity Test.	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.9(g)	Additional Notifications When Using CMS.	No	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	Section 63.5130 specifies the dates for submitting the notification of compliance status.
§ 63.9(h)(5)–(6)	Clarifications	Yes.	
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in § 63.5190.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and Recordkeeping of Failures to Meet Standards.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.5190(a)(5).
§ 63.10(b)(2)(iii)	Maintenance Records	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.5190(a)(5).
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	See § 63.5190(a)(5).
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)	Additional CMS Recordkeeping Requirements.	No	See § 63.5190(a)(5).
§ 63.10(d)(1)–(2)	General Reporting Requirements and Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.5180(e).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources with Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, Malfunction Reports.	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.10(e)	Additional Reporting Requirements for Sources with CMS.	No.	
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/ Flares.	No	Subpart SSSS does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	

General provisions reference	Subject	Applicable to subpart SSSS	Explanation
§ 63.13(a)	Addresses	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.13(b)	Submittal to State Agencies	Yes.	
§ 63.13(c)	Submittal to State Agencies	Yes before [date 181 days after date of publication of final rule in the **Federal Register**]. No unless the state requires the submittal via CEDRI, on and after [date 181 days after date of publication of final rule in the **Federal Register**].	
§ 63.14	Incorporation by Reference	Yes	Subpart SSSS includes provisions for alternative ASTM and ASME test methods that are incorporated by reference.
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 40. Table 3 to subpart SSSS of part 63 is added to read as follows:

TABLE 3 TO SUBPART SSSS OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8

TABLE 3 TO SUBPART SSSS OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
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