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

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Parts 1703, 1734, and 1735

RIN 0572-AC37

#### Distance Learning and Telemedicine Loan and Grant Programs

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development Agency of the United States Department of Agriculture (USDA), hereinafter referred to as RUS or the Agency, is issuing a final rule to streamline, revise, and update the Distance Learning and Telemedicine (DLT) Grant Program, to minimize the burden of applying for and awarding grants. The Agency's goal is to reduce the regulatory burden on grant applicants and to ensure that grant funds are awarded for projects with the most demonstrable need. The Agency will follow this final rule affording the public an opportunity to comment with a subsequent final rule.

**DATES:** This final rule is effective December 27, 2017.

Written comments must be received on or before December 27, 2017.

**ADDRESSES:** Submit your comments on this Rule by any of the following methods:

- Federal Rulemaking Portal at <http://www.regulations.gov>. Follow instructions for submitting comments.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, STOP 1522, Room 5162, Washington, DC 20250-1522.

Additional information about the Rural Development and its programs is

available on the Internet at <http://www.rd.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth Kuchno, Deputy Assistant Administrator, Policy and Outreach Division, Rural Utilities Service, Telecommunications Program, U.S. Department of Agriculture, STOP 1599, 1400 Independence Ave. SW., Washington, DC 20250-1550, Telephone number: (202) 690-4673.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This final rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

**Executive Order 12372**

This final rule is not subject to the requirements of Executive Order 12372, "Intergovernmental Review," as implemented under USDA's regulations at 7 CFR part 3015.

**Executive Order 13771**

This action is expected to be an Executive Order 13771 deregulatory action. This rule is expected to provide meaningful burden reduction by removing interim steps that delay the application process and reducing the amount of resources needed to process and award grant applications.

**Regulatory Flexibility Act Certification**

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

**Environmental Impact Statement**

This final rule has been examined under Agency environmental regulations at 7 CFR part 1970. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.855, Distance Learning and Telemedicine Loans and Grants. The Catalog is available on the Internet at <http://www.cfda.gov> and the General Services Administration's (GSA's) free CFDA Web site at <http://www.cfda.gov>. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's online bookstore at <http://bookstore.gpo.gov>.

**Unfunded Mandates**

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

**E-Government Act Compliance**

RUS is committed to the E-Government Act, which requires



Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### **Executive Order 13132, Federalism**

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### **Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Rural Development has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544-2911 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

#### **USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or

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Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

#### **Information Collection and Recordkeeping Requirements**

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0096 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### **Background**

Rural Development is a mission area within the USDA comprised of the Rural Utilities Service, Rural Housing Service and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America.

RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural

America, including public health and safety, environmental protection and conservation, and cultural and historic preservation.

DLT grants and loans are designed to encourage and improve telemedicine and distance learning services in rural areas through the use of computer networks and related advanced technologies by students, teachers, medical professionals, and rural residents. RUS believes that need is often greatest in areas that are economically challenged, costly to serve, and experiencing outward migration. RUS gives priority to rural areas that the Agency believes have the greatest need for distance learning and telemedicine services based on the criteria outlined in the program regulation 7 CFR part 1734. This program is consistent with the provisions of the Telecommunications Act of 1996 that designate telecommunications service discounts for schools, libraries, and rural health care centers. The DLT Program continues to implement the provision of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) (7 U.S.C. 950aaa *et seq.*) to encourage and improve telemedicine services and distance learning services in rural areas.

Under this rulemaking, RUS is streamlining and revising the DLT Grant Program to minimize the burden of the application and selection processes in this competitive grant program and to ensure that grants are awarded for projects with the most demonstrable need. In order to reduce time required to announce the program on an annual basis, the agency will no longer publish a Notice of Funds Availability and will ensure that all pertinent information related to the application period is posted in the annual funding opportunity posted on [Grants.gov](http://Grants.gov), as required by 2 CFR 200.203, and include the information on the program Web site and in the program application guide, which will be linked to the funding opportunity posting. This rulemaking applies to the DLT Grant Program section of the regulation.

#### *Changes to the Regulation*

Changes to the DLT grant program regulation are statutory requirements and non-statutory issues. The statutory requirement changes are as follows:

(A) In 7 CFR part 1703, subpart E (newly designated 7 CFR part 1734, subpart B), revises the "Appeals" section. In review of the guiding statute, program appeals are defined as applying only to RUS Telecommunications and Electric Borrowers.

(B) In 7 CFR part 1703, subpart D (newly designated 7 CFR part 1734, subpart A), The Agency is revising this regulation to make RUS Telecom and Electrics borrowers eligible to apply for grants. In review of the guiding statute RUS Telecom and Electric Borrowers are not restricted to DLT loans only.

(C) The Agency is now making broadband facilities an eligible grant purpose. In the past, to leverage appropriations to their fullest, the Agency restricted transmission facilities from being an eligible purpose and focused the program on end user equipment. In today's environment, broadband facilities have become an integral part of providing distant learning and telemedicine services and therefore the Agency has decided to include them as an eligible grant purpose.

(D) In 7 CFR part 1703, 7 CFR part 1734 and 7 CFR part 1735 make administrative updates to reflect changes affected by this rule.

Other than the statutory changes, the Agency is affording the public the opportunity to comment on the following *non-statutory* changes which are as follows:

(A) Relocate the DLT Loan and Grant Program from 7 CFR part 1703, subparts D, E, F and G to 7 CFR part 1734, subparts A, B, C, and D.

(B) In 7 CFR part 1703, subpart D (newly designated 7 CFR part 1734, subpart A), remove the definitions of the National School Lunch Program (NSLP), Empowerment Zone/Enterprise Community (EZ/EC), and Champion Community.

(C) In 7 CFR part 1703, subpart E (newly designated 7 CFR part 1734, subpart B), remove points for scoring the criteria from the code of Federal Regulations (CFR) which is used for determining the competitive need and eligibility among submitted applications. Instead, publish the points for scoring the criteria in the application guide and on the program Web site, and update as needed. This change is being made to allow the DLT program to keep up with changes in the industry and the landscape in rural America.

(D) In Subparts E, F and G (newly designated 7 CFR part 1734, subparts B, C, and D), remove references to the publication of notices in the **Federal Register**. In order to reduce time required to announce the program on an annual basis, the agency will no longer publish these notices and will ensure that all pertinent information related to the application period is posted in the annual funding opportunity posted on *Grants.gov*, as required by 2 CFR 200.203, and include the information on

the program Web site and in the program application guide, which will be linked to the funding opportunity posting.

#### List of Subjects

##### 7 CFR Part 1703

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

##### 7 CFR Part 1734

Community development, Grant programs—education, Grant programs—health, Loan programs—education, Loan programs—health, Rural areas.

##### 7 CFR Part 1735

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications, Telephone.

Accordingly, for reasons set forth in the preamble, chapter XVII, title 7, the Code of Federal Regulations is amended as follows:

#### PART 1703—RURAL DEVELOPMENT

- 1. Revise the authority citation for part 1703 to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*

#### Subparts D, E, F and G—[Removed and Reserved]

- 2. Amend part 1703 by removing and reserving subparts D, E, F and G, consisting of §§ 1703.100 through 1703.147.

- 3. Revise § 1703.300 to read as follows:

##### § 1703.300 Purpose.

This subpart H sets forth RUS' policies and procedures for making loan deferments of principal and interest payments on direct loans or insured loans made for electric or telephone purposes, but not for loans made for rural economic development purposes, in accordance with subsection (b) of section 12 of the RE Act. Loan deferments are provided for the purpose of promoting rural development opportunities.

- 4. Add part 1734 to read as follows:

#### PART 1734—DISTANCE LEARNING AND TELEMEDICINE LOAN AND GRANT PROGRAMS

##### Subpart A—Distance Learning and Telemedicine Loan and Grant Programs—General

1734.1 Purpose.

1734.2 Policy.  
1734.3 Definitions.  
1734.4 Applicant eligibility and allocation of funds.  
1734.5 Processing of selected applications.  
1734.6 Disbursement of loans and grants.  
1734.7 Reporting and oversight requirements.  
1734.8 Audit requirements.  
1734.9 Grant and loan administration.  
1734.10 Changes in project objectives or scope.  
1734.11 Grant and loan termination.  
1734.12 Expedited telecommunications loans.  
1734.13–1734.19 [Reserved]

##### Subpart B—Distance Learning and Telemedicine Grant Program

1734.20 [Reserved]  
1734.21 Approved purposes for grants.  
1734.22 Matching contributions.  
1734.23 Nonapproved purposes for grants.  
1734.24 Maximum and minimum grant amounts.  
1734.25 Completed application.  
1734.26 Criteria for scoring grant applications.  
1734.27 Application selection provisions.  
1734.28 Submission of applications.  
1734.29 Appeals.

##### Subpart C—Distance Learning and Telemedicine Combination Loan and Grant Program

1734.30 Use of combination loan and grant.  
1734.31 Approved purposes for a combination loan and grant.  
1734.32 Nonapproved purposes for a combination loan and grant.  
1734.33 Maximum and minimum amounts.  
1734.34 Completed application.  
1734.35 Application selection provisions.  
1734.36 Submission of applications.  
1734.37 Appeals.  
1734.38–1734.39 [Reserved]

##### Subpart D—Distance Learning and Telemedicine Loan Program

1734.40 Use of loan funds.  
1734.41 Approved purposes for loans.  
1734.42 Non-approved purposes for loans.  
1734.43 Maximum and minimum amounts.  
1734.44 Completed application.  
1734.45 Application selection provisions.  
1734.46 Submission of applications.  
1734.47 Appeals.

**Authority:** 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

##### Subpart A—Distance Learning and Telemedicine Loan and Grant Program—General

##### § 1734.1 Purpose.

The purpose of the Distance Learning and Telemedicine (DLT) Loan and Grant Program is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents. This subpart describes

the general policies for administering the DLT program. Subpart B of this part contains the policies and procedures related to grants; subpart C contains the policies and procedures related to a combination loan and grant; and subpart D contains the policies and procedures related to loans.

#### § 1734.2 Policy.

(a) The transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, the Rural Utilities Service (RUS) will provide financial assistance to distance learning and telemedicine projects that will improve the access for people residing in rural areas to educational, learning, training, and health care services.

(b) In providing financial assistance, RUS will give priority to rural areas that it believes have the greatest need for distance learning and telemedicine services. RUS believes that generally the need is greatest in areas that are economically challenged, costly to serve, and experiencing outward migration. This program is consistent with the provisions of the Telecommunications Act of 1996 that designate telecommunications service discounts for schools, libraries, and rural health care centers. RUS will take into consideration the community's involvement in the proposed project and the applicant's ability to leverage grant funds.

(c) In administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) Rural institutions are encouraged to cooperate with each other, with applicants, and with end-users to promote the program being implemented under this subpart.

(e) RUS staff will make diligent efforts to inform potential applicants in rural areas of the programs being implemented under this subpart.

(f) The Administrator may provide loans under this subpart to an entity that has received a telecommunications or electric loan under the Rural Electrification Act of 1936. A borrower receiving a loan shall:

(1) Make the funds provided available to entities that qualify as distance learning or telemedicine projects satisfying the requirements of this subpart, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the financial assistance.

(2) Use the loan to acquire, install, improve, or extend a distance learning or telemedicine system referred to in this subpart.

(g) The Administrator will allocate funds that are appropriated each fiscal year for subparts B, C, and D, of this part respectively. Not more than 30 days before the end of the fiscal year, the Administrator may transfer any funds not committed to grants in the combination loan and grant program to the grant program.

(h) Financial assistance may be provided for end user sites. Financial assistance may also be provided for hubs located in rural or non-rural areas if they are necessary to provide distance learning or telemedicine services to rural residents at end user sites.

(i) The Administrator will publish, at the end of each fiscal year, a notice on the RUS Telecommunications Program Web site of all applications receiving financial assistance under this subpart. Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), applications will be available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250.

#### § 1734.3 Definitions.

As used in this part:

*1996 Act* means the Federal Agriculture Improvement Act of 1996.

*Act* means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

*Administrator* means the Administrator of the Rural Utilities Service, or designee or successor.

*Applicant* means an eligible organization that applies for financial assistance under this subpart.

*Approved purposes* means project purposes for which grant, loan, or combination loan and grant financial assistance may be expended.

*Broadband facilities* means facilities that transmit, receive, or carry voice, video, or data between the terminal equipment at each end of the circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

*Combination loan and grant* means a grant in combination with a loan made under the DLT program.

*Completed application* means an application that includes all those items specified in §§ 1734.125, 1734.134, and in form and substance satisfactory to the Administrator.

*Consortium* means a combination or group of entities undertaking the purposes for which the distance learning and telemedicine financial

assistance is provided. At least one of the entities in a consortium must meet the requirements of § 1734.4.

*Construct* means to acquire, construct, extend, improve, or install a facility or system.

*Distance learning* means a telecommunications link to an end user through the use of eligible equipment to provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in rural areas.

*DLT borrower* means an entity that has an outstanding loan under the provisions of the DLT program.

*DLT program* means the Distance Learning and Telemedicine Loan and Grant Program administered by RUS.

*Economic useful life* as applied to equipment and facilities financed under the DLT program is calculated based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

*Eligible equipment* means computer hardware and software, audio and video equipment, computer networking components, telecommunications terminal equipment, terminal equipment, inside wiring, interactive video equipment.

*Eligible facilities* means land, buildings, or building construction needed to carry out an eligible distance learning or telemedicine project for loan financial assistance only.

*End user* is one or more of the following:

(1) Rural elementary, secondary schools, and other educational institutions, such as institutions of higher education, vocational and adult training and educational centers, libraries and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in distance learning telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers, nursing homes, and clinics, and physicians and staff using such rural medical facilities, that participants in a rural distance learning telecommunications program through a project funded under this part; and

(3) Other rural community facilities, institutions, or entities that receive distance learning or telemedicine services.

*End user site* means a facility that is part of a network or telecommunications system that is utilized by end users. An end user site can also be the residence of someone living in a rural area that is

receiving telemedicine or distant learning services.

*Financial assistance* means a grant, combination loan and grant, or loan.

*GFR* means RUS telecommunications program General Field Representative.

*Grant documents* means the grant agreement, including any amendments and supplements thereto, between RUS and the grantee.

*Grantee* means a recipient of a grant from RUS to carry out the purposes of the DLT program.

*Guarantee* means a guarantee for a loan provided by a RUS borrower or other qualified third party.

*Hub* means a facility that is part of a network or telecommunications system that provides educational or medical services to end user sites.

*Instructional programming* means course material for teaching over the Distance Learning or Telemedicine network, including computer software.

*Interactive equipment* means equipment used to produce and prepare for transmission of audio and visual signals from at least two distant locations so that individuals at such locations can orally and visually communicate with each other. Such equipment includes, but is not limited to, monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

*Loan* means a loan made under the DLT program bearing interest at a rate equal to the then current cost-of-money to the government.

*Loan documents* mean the loan agreement, note, and security instrument, including any amendments and supplements thereto, between RUS and the DLT borrower.

*Local exchange carrier* (LEC) is a regulatory term in telecommunications for the local telephone company. In the United States, wireline telephone companies are divided into two large categories: Long distance (interexchange carrier, or IXCs) and local (local exchange carrier, or LECs). This structure is a result of 1984 divestiture of then regulated monopoly carrier American Telephone & Telegraph. Local telephone companies at the time of the divestiture are also known as Incumbent Local Exchange Carriers (ILEC).

*Matching contribution* means the applicant's contribution for approved purposes.

*Project* means approved purposes for which financial assistance has been provided.

*Project service area* means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

*Recipient* means a grantee, borrower, or both of a DLT program grant, loan or combination loan and grant.

*Rural community facility* means a facility such as a school, library, learning center, training facility, hospital, or medical facility that provides benefits primarily to residents of rural areas.

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

*Secretary* means the Secretary of Agriculture.

*Technical assistance* means:

(1) Assistance in learning to manage, operate, or use equipment or systems; and

(2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

*Telecommunications carrier* means any provider of telecommunications services.

*Telecommunications or electric borrower* means an entity that has outstanding RUS electric or telecommunications loan or loan guarantee under the provisions of the Act.

*Telecommunications systems plan* means the plan submitted by an applicant in accordance with § 1734.25 for grants, § 1734.34 for a combination loan and grant, or § 1734.44 for loans.

*Telemedicine* means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

#### **§ 1734.4 Applicant eligibility and allocation of funds.**

To be eligible to receive a grant, loan and grant combination, or loan under this subpart:

(a) The applicant must be legally organized as an incorporated organization, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b(b) and (c), a state or local unit of government, a consortium, as defined in § 1734.3, or other legal entity, including a private corporation organized on a for-profit or not-for profit basis. Each applicant must provide written evidence of its legal capacity to contract with RUS to obtain the grant, loan and grant combination, or the loan, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each

individual entity must contract with RUS in its own behalf.

(b) The applicant proposes to utilize the financing to:

(1) Operate a rural End-User Site for the purpose of providing Distance Learning or Telemedicine services; or

(2) Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

#### **§ 1734.5 Processing of selected applications.**

(a) During the period between the submission of an application and the execution of documents, the applicant must inform RUS if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so informs RUS, the selection will be rescinded or the application withdrawn and written notice to that effect sent to the applicant.

(b) If an application has been selected and the scope of the project changes substantially, the applicant may be required to reapply in the next program window if the agency and the selected applicant cannot agree on the new scope of the award.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days from the time the public is made aware of the award, the Administrator will rescind the selection and written notice to that effect will be sent to the applicant. The Administrator, in his sole discretion, may extend the 90 day period if it appears resolution is imminent.

(d) RUS may request additional information that would not change the application or scoring, in order to complete the appropriate documents covering financial assistance.

(e) *Financial assistance documents.*  
(1) The documents will include a grant agreement for grants; loan documents, including third party guarantees, notes and security instruments for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The grant agreement and the loan documents will include, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the financial assistance,

supplemental funds required for the project, and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents may contain covenants and conditions the Administrator deems necessary or desirable to provide additional assurance that loans will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to RUS and must, before receiving any advance of loan funds, provide security that is adequate, in the opinion of RUS, to assure repayment, within the time agreed, of all loans to the borrower under the DLT program. This assurance will generally be provided by a first lien upon all facilities and equipment financed by the loan. RUS may require additional security as it deems necessary.

(4) Adequate security may also be provided by third-party guarantees, letters of credit, pledges of revenue, or other forms of security satisfactory to RUS.

(5) The security instrument and other loan documents required by RUS in connection with a loan under the DLT program shall contain such pledges, covenants, and other provisions as may, in the opinion of RUS, be required to secure repayment of the loan.

(6) If the project does not constitute a complete operating system, the DLT recipient shall provide evidence, in form and substance satisfactory to RUS, demonstrating that the recipient has sufficient contractual, financing, or other arrangements to assure that the project will provide adequate and efficient service.

(f) Prior to the execution of a grant and loan document, RUS reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the DLT program and the interests of the government.

(g) If the applicant fails to submit, within 120 calendar days from the date RUS notifies the applicant that they have been selected for an award, all of the information that RUS determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, RUS may rescind the selection of the application.

#### **§ 1734.6 Disbursement of loans and grants.**

(a) For financial assistance of \$100,000 or greater, prior to the disbursement of a grant and a loan, the recipient, if it is not a unit of

government, will provide evidence of fidelity bond coverage as required by 2 CFR part 200, which is adopted by USDA through 2 CFR part 400.

(b) Grants and loans will be disbursed to recipients on a reimbursement basis, or with unpaid invoices for the eligible purposes contained in this subpart, by the following process:

(1) An SF 270, "Request for Advance or Reimbursement," will be completed by the recipient and submitted to RUS not more frequently than once a month;

(2) RUS will review the SF 270 for accuracy when received and will schedule payment if the form is satisfactory. Payment will ordinarily be made within 30 days; and

(c) The recipient's share in the cost of the project must be disbursed in advance of the loan and grant, or if the recipient agrees, on a pro rata distribution basis with financial assistance during the disbursement period. Recipients will not be permitted to provide their contributions at the end of the project.

(d) A combination loan and grant will be disbursed on a pro rata basis based on the respective amounts of financial assistance provided.

#### **§ 1734.7 Reporting and oversight requirements.**

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are expended by the applicant.

(b) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Recipients are to submit all project performance reports, including, but not limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

A final project performance report must be provided by the recipient. It must provide an evaluation of the success of

the project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients, as it determines necessary, to ensure that projects are completed in accordance with the approved scope of work and that the financial assistance is expended for approved purposes.

#### **§ 1734.8 Audit requirements.**

A recipient of financial assistance shall provide RUS with an audit for each year, beginning with the year in which a portion of the financial assistance is expended, in accordance with the following:

(a) If the recipient is a for-profit entity, a Telecommunications or Electric borrower, or any other entity not covered by the following paragraph, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773, "Policy on Audits of RUS Borrowers."

(b) If the recipient is a state or local government, or non-profit organization, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

(c) Grantees shall comply with 2 CFR part 200, as adopted by USDA through 2 CFR part 400, and rules on the disposition of grant assets in Part 200 shall be applied regardless of the type of legal organization of the grantee.

#### **§ 1734.9 Grant and loan administration.**

RUS will conduct reviews as necessary to determine whether the financial assistance was expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the grants and loans are expended only for approved purposes. The recipient is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to RUS, upon request, and is otherwise made available, at the recipient's premises, for review by the RUS representatives, the recipient's certified public accountant, the Office of Inspector General, U.S. Department of Agriculture, the General Accounting Office, and any other official conducting an audit of the recipient's financial statements or records, and program performance for the grants and loans made under this subpart. The recipient shall permit RUS to inspect and copy any records and documents that pertain to the project.

**§ 1734.10 Changes in project objectives or scope.**

The recipient shall obtain prior written approval by RUS for any material change to the scope or objectives of the project, including any changes to the scope of work or the budget submitted to RUS. Any material change shall be contained in a revised scope of work plan to be prepared by the recipient, submitted to, and approved by RUS in writing. If RUS does not approve the change and the awardee is unable to fulfill the original purposes of the award, the awardee will work with RUS to return or rescind the financial assistance.

**§ 1734.11 Grant and loan termination.**

(a) The financial assistance may be terminated when RUS and the recipient agree upon the conditions of the termination, the effective date of the termination, and, in the case of a partial termination of the financial assistance, any unadvanced portion of the financial assistance to be terminated and any advanced portion of the financial assistance to be returned.

(b) The recipient may terminate the financial assistance by written notification to RUS, providing the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of the financial assistance to be terminated. In the case of a partial termination, if RUS believes that the remaining portion of the financial assistance will not accomplish the approved purposes, then RUS may terminate the financial assistance in its entirety, pursuant to the provisions of paragraph (a) of this section.

**§ 1734.12 Expedited telecommunications loans**

RUS will expedite consideration and determination of an application submitted by an RUS telecommunications borrower for a loan under the Act or an advance of such loan funds to be used in conjunction with financial assistance under subparts B, C, or D of this part. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

**§§ 1734.13–1734.19 [Reserved]****Subpart B—Distance Learning and Telemedicine Grant Program****§ 1734.20 [Reserved]****§ 1734.21 Approved purposes for grants.**

For distance learning and telemedicine projects, grants shall finance only the costs for approved purposes. Grants shall be expended only

for the costs associated with the capital assets associated with the project. The following are approved grant purposes:

(a) Acquiring and installing, by lease or purchase, eligible equipment as defined in § 1734.3;

(b) Purchases of extended warranties, site licenses, and maintenance contracts, for a period not to exceed 3 years from installation date, so long as such purchases are in support of eligible equipment included in the project and made concurrently;

(c) Acquiring or developing instructional programming; but shall not include salaries, benefits, and overhead of medical, educational, or any personnel employed by the applicant. The funded development and acquisition of instructional programming must be done through an independent 3rd party, and may not be performed using the applicant's employees.

(d) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; or providing engineering and environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the grant. These purposes shall not exceed 10 percent of the grant; and

(e) Purchasing and installing broadband facilities. This purpose is limited to a maximum of 20 percent of the request grant amount and must be used for providing distance learning or telemedicine services.

**§ 1734.22 Matching contributions.**

(a) The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be used for approved purposes for grants listed in § 1734.21. Matching contributions generally must be in the form of cash. However, in-kind contributions solely for the purposes listed in § 1734.21 may be substituted for cash.

(b) In-kind items listed in § 1734.21 must be non-depreciated or new assets with established monetary values. Use of specific manufacturers' equipment or services, or discounts thereon, are not considered eligible in-kind matching if the manufacturer, or its authorized reseller, is a vendor on the project, the grant writer for the grant application, or has undertaken any responsibility on the grant application, including payment.

(c) Costs incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application,

shall not be considered as an eligible in-kind matching contribution.

(d) Costs incurred for non-approved purposes for grant outlined in § 1734.23 shall not be used as an in-kind matching contribution.

(e) Any financial assistance from Federal sources will not be considered as matching contributions under this subpart unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

**§ 1734.23 Nonapproved purposes for grants.**

(a) A grant made under this subpart will not be provided or used:

(1) To pay for medical or educational equipment not having telemedicine or distance learning as its essential function;

(2) To pay for Electronic Medical Records (EMR) systems;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider unless that service provider is the applicant.

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose sole objective is to provide links between teachers and students or between medical professionals who are located at the same facility or campus environment;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(12) For any purpose that the Administrator has not specifically approved;

(13) Except for leases provided for in § 1734.21, to pay the cost of recurring or operating expenses for the project; or

(14) For any other purposes not specifically contained in § 1734.21.

(b) Except as otherwise provided in § 1734.12, grants shall not be used to finance a project, in part, when the success of the project is dependent upon

the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other financial assistance that is not assured.

**§ 1734.24 Maximum and minimum grant amounts.**

Applications for grants under this subpart will be subject to limitations on the proposed amount of grant funds. The Administrator will establish the maximum and minimum amounts of a grant to be made available to an individual recipient for each fiscal year under this subpart by publishing notice of the maximum and minimum amounts in the RUS DLT Program Application Guide and/or the RUS DLT Program Web site and in the funding opportunity posted on *www.Grants.gov* on an annual basis.

**§ 1734.25 Completed application.**

The following items are required to be submitted to RUS in support of an application for grant funds:

(a) An application for Federal Assistance. A completed Standard Form 424.

(b) An executive summary of the project. The applicant must provide RUS with a general project overview that addresses the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1734.4;

(4) An explanation of the total project cost including a breakdown of the grant required and the source of matching contribution and other financial assistance for the remainder of the project;

(5) A statement specifying whether the project is either a distance learning or telemedicine facility as defined in § 1734.3. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents that will be served by the project at each end user site

(8) A certification by the applicant that facilities constructed with grants do

not duplicate adequate established telemedicine or distance learning services; and

(9) A listing of the location of each end user site (city, town, village, borough, or rural areas) plus the State.

(c) Scoring criteria documentation. Each grant applicant must address and provide documentation on how it meets each of the scoring criteria contained in § 1734.26, and as supplemented in the listing on *grants.gov*, the DLT Application Guide and the agency's Web site.

(d) A scope of work. The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for all capital expenditures reflecting the line item costs for approved purposes for both the grant funds and other sources of funds for the project. Separately, the budget must specify any line item costs that are non-approved purposes for grants as contained in § 1734.23.

(e) Financial information and sustainability. The applicant must provide a narrative description demonstrating: Feasibility of the project, including having sufficient resources and expertise necessary to undertake and complete the project; and, how the project will be sustained following completion of the project.

(f) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the project. Experience in a similar project is desirable but not required.

(g) Funding commitment from other sources. The applicant must provide evidence, in form and substance satisfactory to RUS, that funding agreements have been obtained to ensure completion of the project. These agreements shall be sufficient to ensure:

(1) Payment of all proposed expenditures for the project;

(2) All required matching contributions in § 1734.22; and

(3) Any other funds necessary to complete the project.

(h) A telecommunications system plan. A telecommunications system plan consisting of the following:

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service.

The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using RUS financial assistance. If funds are being requested for broadband facilities, a description of the use of these facilities and how they will be used to deliver distance learning or telemedicine services.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(i) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

(j) Environmental review requirements.

(1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The

application must contain a separate section entitled “Environmental Impact of the Project.”

(2) The applicant must use any programmatic environmental agreements, available from RUS, in effect at the time of filing to assist in complying with the requirements of this section.

(k) Evidence of legal authority and existence. The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and perform the activities proposed under the grant application.

(l) Federal debt certification. The applicant must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

(m) Consultation with USDA State Director, Rural Development. The applicant must provide evidence that it has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the State or local level.

(n) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of the 1996 Act.

#### **§ 1734.26 Criteria for scoring grant applications.**

The criteria by which applications will be scored will be published in the RUS DLT Program application guide and/or the RUS DLT Program Web site and in the funding opportunity posted on [www.Grants.gov](http://www.Grants.gov) Web site on an annual basis. The criteria will be used to determine and evaluate: Rurality; economic need; service need and benefit; and special considerations as determined by the Administrator

#### **§ 1734.27 Application selection provisions.**

(a) Applications will be evaluated competitively by the Agency and will be ranked in accordance with § 1734.26. Applications will then be awarded generally in rank order until all grant funds are expended, subject to paragraphs (b), (c), and (d) of this section. RUS will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; costs; location; and other characteristics of the application and the project to determine the number of points assigned to a grant application for all selection criteria.

(b) Regardless of the number of points an application receives in accordance

with § 1734.26, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(1) Limit the number of applications selected for projects located in any one State during a fiscal year;

(2) Limit the number of selected applications for a particular type of project;

(3) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher scoring application. In this case, however, the Administrator will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount in accordance with § 1734.25(e). An applicant or multiple applicants affected under this paragraph will have the opportunity to be considered for loan financing in accordance with subparts C and D of this part.

(c) RUS will not approve a grant if RUS determines that:

(1) The applicant’s proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1734.25(e);

(2) The applicant’s proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, operation, or sustainability of the project;

(3) Other applications would provide more benefit to rural America based on a review of the financial and technical information submitted in accordance with § 1734.25(e).

(4) Any other aspect of the applicant’s proposal fails to adequately address any requirement of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT Program contained in § 1734.2.

(d) RUS may reduce the amount of the applicant’s grant based on insufficient program funding for the fiscal year in which the project is reviewed. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing.

#### **§ 1734.28 Submission of applications.**

(a) Applications will be accepted as announced in the RUS DLT Program application guide and/or the RUS DLT Program Web site and in the funding opportunity posted on [www.Grants.gov](http://www.Grants.gov) on an annual basis.

(b) When submitting paper applications:

(1) Applications for grants shall be submitted to the RUS, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 1590, Washington, DC 20250–1590. Applications should be marked “Attention: Assistant Administrator, Telecommunications Program”.

(2) Applications must be submitted to RUS postmarked no later than the application filing deadline established by the Administrator if the applications are to be considered during the period for which the application was submitted. The deadline for submission of applications each fiscal year will be announced in the RUS DLT Program application guide and/or the RUS DLT Program Web site and in the funding opportunity posted on [www.Grants.gov](http://www.Grants.gov) on an annual basis.

(3) All applicants must submit an original and a digital copy of a completed application.

#### **§ 1734.29 Appeals.**

RUS Telecommunications and Electric Borrowers may appeal the decision to reject their application. Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1590, Washington, DC 20250–1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator’s determination will be final. A copy of the Administrator’s decision will be furnished promptly to the applicant.

#### **Subpart C—Distance Learning and Telemedicine Combination Loan and Grant Program**

##### **§ 1734.30 Use of combination loan and grant.**

(a) A combination loan and grant may be used by eligible organizations as defined in § 1734.4 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in § 1734.31 provided that no



financial assistance may exceed the maximum amount for the year in which the combination loan and grant is made published in the funding opportunity posted on [www.grants.gov](http://www.grants.gov) on an annual basis.

(b) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as determined in § 1734.26(b)

**§ 1734.31 Approved purposes for a combination loan and grant.**

The approved purposes for a combination loan and grant are:

(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in § 1734.3;

(b) Acquiring instructional programming;

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with a combination loan and grant (this purpose shall not exceed 10 percent of the total requested financial assistance);

(d) Paying for medical or educational equipment and facilities that are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction determined by RUS to be necessary and incidental to the project. The applicant must demonstrate that financial assistance funding from other sources is not available at a cost that does not

adversely impact the economic viability of the project as determined by the Administrator. Financial assistance for this purpose must be necessary and incidental to the total amount of financial assistance requested; and

(h) Acquiring telecommunications or broadband facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator.

**§ 1734.32 Nonapproved purposes for a combination loan and grant.**

(a) Without limitation, a combination loan and grant made under this subpart shall not be expended:

(1) To pay salaries, wages, or employee benefits to medical or educational personnel;

(2) To pay for the salaries or administrative expenses of the applicant or the project;

(3) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(4) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(5) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(6) For any purpose that the Administrator has not specifically approved;

(7) Except for leases (see § 1734.31), to pay the cost of recurring or operating expenses for the project; or,

(8) For any other purposes not specifically outlined in § 1734.31.

(b) Except as otherwise provided in § 1734.12, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart or is dependent upon the receipt of other funding that is not assured.

**§ 1734.33 Maximum and minimum amounts.**

Applications for a combination loan and grant under this subpart will be subject to limitations on the proposed amount of loans and grants. The Administrator will establish the maximum and minimum amount of loans and grants and the portion of grant funds as a percentage of total assistance

for each project to be made available to an individual recipient for each fiscal year under this subpart, by posting a funding opportunity in the RUS DLT Program Application Guide and/or the RUS DLT Program Web site and in the funding opportunity posted on [www.Grants.gov](http://www.Grants.gov) on an annual basis.

**§ 1734.34 Completed application.**

The following items are required to be submitted to RUS in support of an application for a combination loan and grant:

(a) *An application for federal assistance:* A completed Standard Form 424.

(b) *An executive summary of the project:* The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1734.4;

(4) An explanation of the total project cost including a breakdown of the combination loan and grant required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in § 1734.3. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents that will be served by the project at each end user site;

(8) A certification by the applicant that facilities constructed with a combination loan and grant do not duplicate adequately established telemedicine or distance learning services.

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) A scope of work. The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;  
 (3) The time-frames for accomplishing the project objectives and activities; and  
 (4) A budget for capital expenditures reflecting the line item costs for both the combination loan and grant and any other sources of funds for the project.

(d) Financial information. The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan with a maturity period greater than one year. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation, or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data that adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years and repay the loan portion of the combination loan and grant. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan portion of the combination loan and grant.

(2) A list of property which will be used as collateral to secure repayment of the loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a security interest in the collateral that secures the loan. RUS considers as adequate security for a loan, a guarantee

by a RUS Telecommunications or Electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a combination loan and grant are being requested should be clearly indicated.

(4) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(5) For applicants eligible under § 1734.4(1), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(e) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor similar to the project. Experience in a similar project is desirable but not required.

(f) A telecommunications system plan. A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (5) of this section are required only when the applicant is requesting a combination loan and grant for telecommunications transmission facilities):

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications or broadband transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via

telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using a combination loan and grant.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussions with local exchange carriers serving the project area addressing the concerns contained in § 1734.31(h).

(5) The capabilities of the telecommunications or broadband transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards, and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

(h) Environmental review requirements.

(1) The applicant must provide details of the project's impact on the human environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant must use any programmatic environmental agreements, available from RUS, in effect at the time of filing to assist in complying with the requirements of this section.

(i) Evidence of legal authority and existence. The applicant must provide evidence of its legal existence and authority to enter into a grant and incur debt with RUS.

(j) Federal debt certification. The applicant must provide evidence that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

(k) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) Additional information required by RUS. The applicant must provide any additional information RUS may consider relevant to the application and necessary to adequately evaluate the application. RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

#### **§ 1734.35 Application selection provisions.**

(a) A combination loan and grant will be approved based on availability of funds, the financial feasibility of the project in accordance with § 1734.34(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a combination loan and grant, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a combination loan and grant from funds available for the fiscal year. If such priority is achieved, RUS will process the combination loan and grant application on a first-in, first-out basis,

provided that the total amount of applications on-hand for combination loans and grants does not exceed 90 percent of the total loan and grant funding available for the fiscal year. At such time as the total amount of applications eligible for combination loans and grants, if such applications were approved, exceeds 90 percent of amount of combination loan and grant funding available, RUS will process the remaining applications using the evaluation criteria referenced in § 1734.26.

(c) RUS will not approve a combination loan and grant if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility, or will not be adequately secured in accordance with the requirements contained in § 1734.34(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in § 1734.2.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding, an appeal may be filed in accordance with § 1734.37.

#### **§ 1734.36 Submission of applications.**

(a) RUS will accept applications for a combination loan and grant submitted by RUS Telecommunications General Field Representatives (GFRs), by Rural Development State Directors, or by applicants themselves. Applications for a combination loan and grant under this subpart may be filed at any time and will be evaluated as received.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are

submitted. All applicants must submit an original and an electronic copy of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the State Director. The State Director will:

(1) Review each application for completeness in accordance with § 1734.34, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1734.35, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with § 1734.35 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A combination loan and grant recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of § 1734.34 and § 1734.35 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by RUS, forward an original and electronic version of the application with a financial assistance recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a review of the application and the financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines

that a combination loan and grant can be approved, the State Director will be notified and the State Director will notify the applicant. A combination loan and grant will be processed, approved, and serviced in accordance with §§ 1734.5 through 1734.12.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination.

(c) Applications submitted by RUS Telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and an electronic version a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to RUS. RUS will:

(1) Review each application for completeness in accordance with § 1734.34, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a combination loan and grant assistance, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1734.35, and other requirements of this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a combination loan and grant can be approved, the applicant will be notified. A combination loan and grant will be processed, approved, and serviced in

accordance with §§ 1734.5 through 1734.12.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be able to appeal in accordance with § 1734.37.

#### **§ 1734.37 Appeals.**

RUS Electric and Telecommunications Borrowers may appeal a decision to reject their application. Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

#### **§§ 1734.38–1734.39 [Reserved]**

### **Subpart D—Distance Learning and Telemedicine Loan Program**

#### **§ 1734.40 Use of loan funds.**

A loan may be used by eligible organizations as defined in § 1734.4 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in § 1734.41 provided that no financial assistance may exceed the maximum amount for the year in which the loan is made. Entities seeking a loan must be able to provide security and execute a note with a maturity period greater than one year. The following entities are eligible for loans under this subpart:

(a) Organizations as defined in § 1734.4. If a RUS Telecommunications Borrower is seeking a loan, the borrower does not need to submit all of the financial security information required by § 1734.44(d). The borrower's latest financial report (Form 479) filed with RUS and any additional information relevant to the project, as determined by RUS, will suffice;

(b) Any non-profit or for-profit entity, public or private entity, urban or rural institution, or rural educational broadcaster, which proposes to provide and receive distance learning and telemedicine services to carry out the purposes of this subpart; or

(c) Any entity that contracts with an eligible organization in paragraphs (a) or

(b) of this section for constructing distance learning or telemedicine facilities for the purposes contained in § 1734.41, except for those purposes in § 1734.41(h).

(d) Applicants must meet the minimum eligibility requirement for determining the extent to which the project serves rural areas as contained in § 1734.26(b)

#### **§ 1734.41 Approved purposes for loans.**

The following are approved purposes for loans:

(a) Acquiring, by lease or purchase, eligible equipment or facilities as defined in § 1734.3;

(b) Acquiring instructional programming;

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the loan (financial assistance for this purpose shall not exceed 10 percent of the requested financial assistance);

(d) Paying for medical or educational equipment and facilities which are shown to be necessary to implement the project, including vehicles utilizing distance learning and telemedicine technology to deliver educational and health care services. The applicant must demonstrate that such items are necessary to meet the purposes under this subpart and financial assistance for such equipment and facilities is not available from other sources at a cost which would not adversely affect the economic viability of the project;

(e) Providing links between teachers and students or medical professionals who are located at the same facility, provided that such facility receives or provides distance learning or telemedicine services as part of a distance learning or telemedicine network which meets the purposes of this subpart;

(f) Providing for site development and alteration of buildings in order to meet the purposes of this subpart. Loans for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(g) Purchasing of land, buildings, or building construction, where such costs are demonstrated necessary to construct distance learning and telemedicine facilities. The applicant must demonstrate that funding from other sources is not available at a cost which does not adversely impact the economic viability of the project as determined by the Administrator. Financial assistance

for this purpose must be necessary and incidental to the total amount of financial assistance requested;

(h) Acquiring of telecommunications or broadband facilities provided that no telecommunications carrier will install such facilities under the Act or through other financial procedures within a reasonable time period and at a cost to the applicant that does not impact the economic viability of the project, as determined by the Administrator;

(i) Any project costs, except for salaries and administrative expenses, not included in paragraphs (a) through (h) of this section, incurred during the first two years of operation after the financial assistance has been approved. The applicant must show that financing such costs are necessary for the establishment or continued operation of the project and that financing is not available for such costs elsewhere, including from the applicant's financial resources. The Administrator will determine whether such costs will be financed based on information submitted by the applicant. Loans shall not be made exclusively to finance such costs, and financing for such costs will not exceed 20 percent of the loan provided to a project under this section; and

(j) All of the costs needed to provide distance learning broadcasting to rural areas. Loans may be used to cover the costs of facilities and end-user equipment dedicated to providing educational broadcasting to rural areas for distance learning purposes. If the facilities are not 100 percent dedicated to broadcasting, a portion of the financing may be used to fund such facilities based on a percentage of use factor that approximates the distance learning broadcasting portion of use.

**§ 1734.42 Non-approved purposes for loans.**

(a) Loans made under this subpart will not be provided to pay the costs of recurring or operating expenses incurred after two years from approval of the project except for leases (see § 1734.41).

(b) Loans made under this subpart will not be provided for any of the following costs:

(1) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider, unless the applicant is the local exchange carrier or other telecommunications service provider;

(2) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred

prior to RUS' receipt of the completed application;

(3) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(4) To pay for salaries, wages, or administrative expenses; or

(5) For any purpose that the Administrator has not specifically approved.

(c) Except as otherwise provided in § 1734.12, funds shall not be used to finance a project, in part, when the success of the project is dependent upon the receipt of additional financial assistance under this subpart D or is dependent upon the receipt of other funding that is not assured.

**§ 1734.43 Maximum and minimum amounts.**

Applications for loans under this subpart will be subject to limitations on the proposed amount of loans. The Administrator will establish the maximum amount of a loan available to an applicant under this subpart.

**§ 1734.44 Completed application.**

The following items are required to be submitted in support of an application for a loan:

(a) *An application for federal assistance:* A completed standard form 424.

(b) An executive summary of the project. The applicant must provide RUS with a general project overview that addresses each of the following 9 categories:

(1) A description of why the project is needed;

(2) An explanation of how the applicant will address the need (see paragraph (b)(1) of this section), why the applicant requires financial assistance, the types of educational or medical services to be offered by the project, and the benefits to the rural residents;

(3) A description of the applicant, documenting eligibility in accordance with § 1734.4;

(4) An explanation of the total project cost including a breakdown of the loan required and the source of funding, if applicable, for the remainder of the project;

(5) A statement specifying whether the project provides predominantly distance learning or telemedicine services as defined in § 1734.3. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system;

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(7) A description of the participating hubs and end user sites and the number of rural residents which will be served by the project at each end user site;

(8) A certification by the applicant that facilities funded by a loan do not duplicate adequate established telemedicine or distance learning services;

(9) A listing of the location of each end user site (city, town, village, borough, or rural area plus the State).

(c) A scope of work. The scope of work must include, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for the loan and any other sources of funds for the project.

(d) Financial information. The applicant must show its financial ability to complete the project; show project feasibility; and provide evidence that it can execute a note for a loan for a maturity period greater than one year.

For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation, or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years and repay the requested loan. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll

charges, system maintenance, salaries, training, and any other general operating expenses, provide for replacement of depreciable items, and show repayment of interest and principal for the loan.

(2) A list of property which will be used as collateral to secure repayment of the proposed loan. The applicant shall purchase and own collateral that secures the loan free from liens or security interests and take all actions necessary to perfect a first lien in the collateral that secures the loan. RUS will consider as adequate security a loan guarantee by a telecommunications or electric borrower or by another qualified party. Additional forms of security, including letters of credit, real estate, or any other items will be considered. RUS will determine the adequacy of the security offered.

(3) As applicable, a depreciation schedule covering all assets of the project. Those assets for which a loan is being requested should be clearly indicated.

(4) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(5) For applicants eligible under § 1734.4(a)(1), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(e) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the project. Experience in a similar project is desirable but not required.

(f) A telecommunications system plan. A telecommunications system plan, consisting of the following (the items in paragraphs (f)(4) and (5) of this section are required only when the applicant is requesting a loan for telecommunications transmission facilities):

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include

consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using a loan.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services, and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussions with local exchange carriers serving the project area addressing the concerns contained in § 1734.41(h).

(5) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards, and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations including, but not limited to the following:

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

(h) Environmental review requirements.

(1) The applicant must provide details of the project's impact on the environment and historic properties, in accordance with 7 CFR part 1970. The application must contain a separate section entitled "Environmental Impact of the Project."

(2) The applicant must use any programmatic environmental agreements, available from RUS, in effect at the time of filing to assist in complying with the requirements of this section.

(i) Evidence of legal authority and existence. The applicant must provide evidence of its legal existence and authority to enter into debt with RUS and perform the activities proposed under the loan application.

(j) Federal debt certification. The applicants must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

(k) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the project would further the purposes of this subpart.

(l) Additional information required by RUS. The applicant must provide any additional information RUS determines is necessary to adequately evaluate the application. Modifications or changes, including changes in the loan amount requested, may be requested in any project described in an application submitted under this subpart.

#### **§ 1734.45 Application selection provisions.**

(a) Loans will be approved based on availability of funds, the financial feasibility of the project in accordance with § 1734.44(d), the services to be provided which demonstrate that the project meets the general requirements of this subpart, the design of the project; costs; location; and other characteristics of the application.

(b) RUS will determine, from the information submitted with each application for a loan, whether the application achieves sufficient priority, based on the criteria set forth in the 1996 Act, to receive a loan from funds available for the fiscal year. If such priority is achieved, RUS will process the loan application on a first-in, first-out basis, provided that the total amount of applications on-hand for loans does not exceed 90 percent of the total loan funding available for the fiscal year. At such time as the total amount of applications eligible for loans, if such applications were approved, exceeds 90 percent of amount of loan funding available, RUS will process the remaining applications using the evaluation criteria referenced in § 1734.26.

(c) A loan will not be approved if it is determined that:

(1) The applicant's proposal does not indicate financial feasibility, or is not adequately secured in accordance with the requirements of § 1734.44(d);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, or operation of the project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program contained in § 1734.2.

(d) RUS will provide the applicant with a statement of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section. The applicant will be provided 15 days from the date of the RUS letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the loan will not be approved, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1734.47.

#### **§ 1734.46 Submission of applications.**

(a) RUS will accept applications for loans submitted by RUS Telecommunications GFRs, by Rural Development State Directors, or by applicants themselves. Applications for loans under this subpart may be filed at any time and will be evaluated as received on a non-competitive basis.

(b) Applications submitted to the State Director, Rural Development, in the State serving the headquarters of the project will be evaluated as they are submitted. All applicants must submit an original and an electronic version of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the State Director. The State Director will:

(1) Review each application for completeness in accordance with § 1734.44, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the State Director's written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (b)(1) of this section, review the application to determine suitability for financial assistance in accordance with § 1734.45, and other requirements of this subpart. Based on its review, the State Director will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) Based on the review in accordance with § 1734.45 and other requirements of this subpart, make a preliminary determination of suitability for financial assistance. A loan recommendation will be prepared by the State Director with concurrence of the RUS telecommunications GFR that addresses the provisions of §§ 1734.44 and 1734.45 and other applicable requirements of this subpart.

(4) If the application is determined suitable for further consideration by RUS, forward an original and an electronic version of the application with a loan recommendation, signed jointly, to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC. The applicant will be notified by letter of this action. Upon receipt of the application from the State Director, RUS will conduct a cursory review of the

application and the recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the State Director will be notified and the State Director will notify the applicant. Applications for loans will be processed, and approved loans serviced, in accordance with §§ 1734.5 through 1734.12.

(5) If the State Director determines that the application is not suitable for further consideration by RUS, notify the applicant with the reasons for this determination.

(c) Applications submitted by RUS Telecommunications GFRs or directly by applicants will be evaluated as they are submitted. All applicants must submit an original and an electronic version of a completed application. The applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the State, at the same time it submits an application to the RUS. RUS will:

(1) Review each application for completeness in accordance with § 1734.44, and notify the applicant, within 15 working days of receiving the application, of the results of this review, acknowledging a complete application, or citing any information that is incomplete. To be considered for a loan, the applicant must submit any additional information requested to complete the application within 15 working days of the date of the RUS written response. If the applicant fails to submit such information, the application will be returned to the applicant.

(2) Within 30 days of the determination of a completed application in accordance with paragraph (c)(1) of this section, review the application to determine suitability for financial assistance in accordance with this subpart. Based on its review, RUS will work with the applicant to resolve any questions or obtain any additional information. The applicant will be notified, in writing, of any additional information required to allow a financial assistance recommendation and will be provided a reasonable period of time to furnish the additional information.

(3) If the application is determined suitable for further consideration by RUS, conduct a review of the application and financial assistance recommendation. A final determination will be made within 15 days. If the Administrator determines that a loan can be approved, the applicant will be notified. Applications will be processed, and approved loans serviced, in

accordance with §§ 1734.5 through 1734.12.

(4) If RUS determines that the application is not suitable for further consideration, notify the applicant with the reasons for this determination. The applicant will be offered appeal rights in accordance with § 1734.47.

**§ 1734.47 Appeals.**

RUS Electric and Telecommunications Borrowers may appeal a decision to reject their application. Any appeal must be made, in writing, within 10 days after the applicant is notified of the determination to deny the application. Appeals shall be submitted to the Administrator, RUS, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1590, Washington, DC 20250-1590. Thereafter, the Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant.

**PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM**

■ 5. The authority citation for part 1735 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

■ 6. Amend § 1735.30 by revising paragraph (d)(1)(v) to read as follows:

**§ 1735.30 Hardship loans.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) *Distance Learning and Medical Link Facilities.* Borrowers will receive 2 points for loan funds included in the application for the purpose of providing distance learning or medical link transmission facilities. If loan funds are included for both distance learning and medical link transmission facilities, borrowers will receive 3 points. (See 7 CFR part 1734 for definitions of distance learning and medical link.)

\* \* \* \* \*

Dated: October 10, 2017.

**Christopher A. McLean,**  
*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2017-25266 Filed 11-24-17; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2017-1095; Product Identifier 2012-NM-215-AD; Amendment 39-19108; AD 2017-24-04]

RIN 2120-AA64

**Airworthiness Directives; Fokker Services B.V. Airplanes**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.27 airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition on these products, and doing the actions specified in those instructions. This AD was prompted by reports indicating that certain exit signs have a hydrogen isotope that decays over time, causing the signs to lose their brightness. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD becomes effective December 12, 2017.

We must receive comments on this AD by January 11, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1095; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2012-0238, dated November 9, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Fokker Services B.V. Model F.27 airplanes. The MCAI states:

A number of Fokker F.27 aeroplanes have exit signs installed to locate the emergency exits. A number of these signs are not electrically powered, but are self-illuminated by means of a hydrogen isotope known as Tritium. As this isotope decays over time, these signs will lose their brightness.

To remain compliant with regulations, Tritium exit signs should be replaced when their brightness has deteriorated below accepted levels. The established service life for the Tritium powered exit signs is 7 years. Currently, the F.27 maintenance program does not include a replacement task for exit signs containing Tritium.

This condition, if not corrected, could result in insufficiently bright exit signs, possibly preventing safe evacuation during an emergency, which could result in injury to occupants.

For the reasons described above, this [EASA] AD requires the replacement of the affected Tritium powered exit signs. Depending on the aeroplane configuration, the replacement exit signs must be either photo-luminescent or Tritium powered. In addition, this [EASA] AD introduces a life limit for the Tritium signs and requires repetitive maintenance tasks for the photo-luminescent signs. [The EASA AD provides an option to revise the airplane maintenance program.]

You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1095.

**FAA's Determination and Requirements of This AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the



MCAI. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**FAA’s Determination of the Effective Date**

Since there are currently no domestic operators of this product, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason(s) stated above, we find that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2017–1095; Product Identifier 2012–NM–215–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

**Costs of Compliance**

Currently, there are no affected U.S.-registered airplanes. This AD requires contacting the FAA to obtain instructions for addressing the unsafe condition, and doing the actions specified in those instructions. Based on the actions specified in the MCAI, we are providing the following cost estimates for an affected airplane that is placed on the U.S. Register in the future:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product
Replacement .....	1 work-hour × \$85 per hour = \$85 .....	Unavailable .....	\$85
Inspection .....	1 work-hour × \$85 per hour = \$85 .....	\$0 .....	85
Maintenance or inspection program revision .....	1 work-hour × \$85 per hour = \$85 .....	\$0 .....	85

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2017–24–04 Fokker Services B.V.:**  
Amendment 39–19108; Docket No. FAA–2017–1095; Product Identifier 2012–NM–215–AD.

**(a) Effective Date**

This AD becomes effective December 12, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Fokker Services B.V. Model F.27 airplanes, certificated in any category, serial numbers 10425 through 10692 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 11, Placards and markings.

**(e) Reason**

This AD was prompted by reports indicating that certain exit signs have a hydrogen isotope that decays over time, causing the signs to lose their brightness. We are issuing this AD to prevent insufficiently illuminated exit signs, which could possibly prevent safe evacuation during an emergency and cause injury to occupants.

**(f) Compliance**

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

**(g) Required Actions**

Within 30 days after the effective date of this AD, request instructions from the Manager, International Section, Transport Standards Branch, FAA, to address the unsafe condition specified in paragraph (e) of this AD; and accomplish the actions at the times specified in, and in accordance with, those instructions. Guidance can be found in Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) AD 2012-0238, dated November 9, 2012.

**(h) Alternative Methods of Compliance (AMOCs)**

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

**(i) Related Information**

(1) Refer to MCAI EASA AD 2012-0238, dated November 9, 2012, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1095.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149.

**(j) Material Incorporated by Reference**

None.

Issued in Renton, Washington, on November 14, 2017.

**Chris Spangenberg,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2017-25382 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2016-9549; Airspace Docket No. 17-ASO-5]

**Amendment of Class E Airspace; Alexander City, AL**

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Alexander City, AL, due to the decommissioning of the Alexander City non-directional radio beacon (NDB), which requires airspace reconfiguration at Thomas C Russell Field Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport.

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

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741-6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; 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 at Thomas C Russell Field Airport, Alexander City, AL, to support IFR operations at the airport.

**History**

On June 7, 2017, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (82 FR 26406) Docket No. FAA-2016-9549 to amend Class E airspace extending upward from 700 feet above the surface at Thomas C Russell Field Airport, Alexander City, AL, due to the decommissioning of the Alexander City NDB and cancellation of the NDB approach. 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 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

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

**The Rule**

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 within a 7.7 mile radius of Thomas C Russell Field Airport, Alexander City, AL, due to the decommissioning of the Alexander City NDB and cancellation of the NDB approach. The changes ensure the safety and management of IFR operations at the airport. The geographic

coordinates of the airport are amended 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

#### ASO AL E5 Alexander City, AL [Amended]

Thomas C. Russell Field Airport, AL  
(Lat. 32°54'53" N., long. 85°57'47" W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Thomas C. Russell Field Airport.

Issued in College Park, Georgia, on November 16, 2017.

**Ryan W. Almasy,**

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

[FR Doc. 2017–25308 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–0983 Airspace  
Docket No. 17–AWP–24]

#### Amendment of Class E Airspace; Hawthorne, NV

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

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

**SUMMARY:** This final rule technical amendment amends the legal description of Class E Airspace extending upward from 700 feet above the surface at Hawthorne Industrial Airport, Hawthorne, NV, to correct a clerical error. The airspace legal description inadvertently omits the word "radius" and defined the airspace boundary "within 3.6 miles of" instead of "within a 3.6-mile radius of" the airport.

**DATES:** Effective 0901 UTC, November 27, 2017. 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.

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

#### 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 at Industrial Airport, Hawthorne, NV, to support IFR operations at the airport.

### History

The FAA recently published a rule in the **Federal Register** (82 FR 37514, August 11, 2017) Docket No. FAA–2017–0297, establishing Class E airspace extending upward from 700 feet above the surface at Hawthorne Industrial Airport, Hawthorne, NV, that contained a clerical error in the airspace legal description. The word 'radius' was omitted from the sentence that reads ". . . within 3.6 miles of the Hawthorne Industrial Airport. . . ."

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

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

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

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by correcting a clerical error in the regulatory text of Class E airspace extending upward from 700 feet above the surface at Hawthorne Industrial Airport, Hawthorne, NV. The text is corrected to read "That airspace extending upward from 700 feet above the surface within a 3.6-mile radius of Hawthorne Industrial Airport. . . ."

Section 553(b)(3)(B) of the Administrative Procedures Act (5

U.S.C.) authorizes agencies to dispense with notice and comment procedure when the agency for “good cause” finds that these procedures are “impracticable, or contrary to the public interest.” As published, the omission of the word “radius” in this regulation may prove to be misleading. Accordingly, action is taken herein to add the word “radius” to the airspace description for Hawthorne Industrial Airport, therefore, in the interest of flight safety, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Section 553(d) of the Administrative Procedures Act (5 U.S.C.) authorizes agencies to determine an effective date of less than 30 days after publication for good cause found and published with the rule. In consideration of the need to correct the airspace description for Hawthorne Industrial Airport and to avoid confusion on the part of pilots flying in the vicinity of airport, the FAA finds good cause for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

#### Regulatory Notices and Analyses

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

#### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5a. 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

*Paragraph 6005 Class E Surface Area Airspace.*

\* \* \* \* \*

##### AWP NV E5 Hawthorne, NV [Amended]

Hawthorne Industrial Airport, NV  
(Lat. 38°32′42″ N., long. 118°37′57″ W.)

That airspace extending upward from 700 feet above the surface within a 3.6-mile radius of Hawthorne Industrial Airport and within 2 miles each side of a line extending from lat. 38°32′25″ N., long. 118°37′26″ W.; to lat. 38°28′43″ N., long. 118°27′48″ W.; to lat. 38°28′49″ N., long. 118°24′19″ W.; to lat. 38°32′06″ N., long. 118°18′07″ W.

Issued in Seattle, Washington, on November 15, 2017.

**Brian J. Johnson,**

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

[FR Doc. 2017–25420 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–0666; Airspace Docket No. 17–ANM–15]

#### Amendment of Class D and Class E Airspace; Pueblo, CO

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace, Class E surface area airspace, and Class E airspace upward from 700 feet above the surface at Pueblo Memorial Airport, Pueblo, CO. Also, the part-time Notice to Airmen (NOTAM) information is removed from Class E airspace designated as an extension, and the geographic coordinates for Pueblo Memorial Airport in the associated Class D and E airspace areas are amended to match the FAA’s aeronautical database. A biennial review found these changes are necessary to accommodate airspace redesign for the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System. An editorial change also is made to the Class D airspace and Class E surface area airspace legal descriptions replacing “Airport/Facility Directory” with the term “Chart Supplement.”

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

#### 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 modifies Class D and E airspace at Pueblo Memorial Airport, Pueblo, CO, in support of instrument flight rules operations at the airport.

### History

On August 3, 2017, the FAA published in the **Federal Register** (82 FR 36103) Docket FAA-2017-0666, a notice of proposed rulemaking to modify Class D airspace, Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface at Pueblo Memorial Airport, Pueblo, CO. 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 D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

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

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

### The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, Class E surface area airspace, Class E airspace designated as an extension, and Class E airspace extending upward from 700 feet above the surface at Pueblo Memorial Airport, Pueblo, CO.

Class D airspace and Class E surface area airspace are reduced to within a 5.1-mile radius (from 5.6 miles) of Pueblo Memorial Airport.

The Class E airspace designated as an extension to a Class D or Class E surface area east of the airport is modified to a 7.2 mile wide segment (from 7 miles) extending to 11.3 miles (from 11.4 miles) east of the airport; the segment west of the airport is removed as it is not necessary to support current operations; and a segment is established north of the airport within 1.6 miles west and 1.3 miles east of the 358° bearing from the airport extending from the 5.1 mile radius to 6.7 miles north of the airport.

Also, this action eliminates the following language from the legal description of Class E airspace designated as an extension to a Class D or Class E surface area at the airport: "This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory," since the airspace remains in effect full time.

Class E airspace extending upward from 700 feet is reduced to within a 7.6-mile radius of the Pueblo Memorial Airport with extensions to 12 miles north and 12.3 miles east of the airport (from a 21.8-mile radius with an extension to 28.2 miles east). Also, this action removes Class E airspace extending upward from 1,200 feet above the surface since the airspace is wholly contained within the Denver Class E en route airspace area and duplication is not necessary.

Additionally, this action updates the geographic coordinates for Pueblo Memorial Airport and replaces the outdated term "Airport/Facility Directory" with the term "Chart Supplement" in the associated Class D and Class E airspace legal descriptions. This airspace redesign is necessary for the safety and management of IFR operations at the airport.

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

#### § 71.1 [Amended]

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

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

#### ANM CO D Pueblo, CO [Amended]

Pueblo Memorial Airport, CO  
(Lat. 38°17'24" N., long. 104°29'53" W.)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 5.1-mile radius of Pueblo Memorial Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

#### ANM CO E2 Pueblo, CO [Amended]

Pueblo Memorial Airport, CO  
(Lat. 38°17'24" N., long. 104°29'53" W.)

That airspace extending upward from the surface within a 5.1-mile radius of Pueblo

Memorial Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

#### **ANM CO E4 Pueblo, CO [Amended]**

Pueblo Memorial Airport, CO  
(Lat. 38°17'24" N., long. 104°29'53" W.)

That airspace extending upward from 700 feet above the surface within 3.6 miles each side of the 081° bearing from Pueblo Memorial Airport extending from the 5.1-mile radius of the airport to 11.3 miles east of the airport, and within 1.6 miles west and 1.3 miles east of the 358° bearing from the airport extending from the 5.1-mile radius of the airport to 6.7 miles north of the airport.

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

\* \* \* \* \*

#### **ANM CO E5 Pueblo, CO [Amended]**

Pueblo Memorial Airport, CO  
(Lat. 38°17'24" N., long. 104°29'53" W.)

That airspace upward from 700 feet above the surface within a 7.6-mile radius of Pueblo Memorial Airport, and within 2.2 miles west and 1.8 miles east of the 358° bearing from the airport extending to 12 miles north of the airport, and within 3.8 miles each side of the 081° bearing from the airport extending to 12.3 miles east of the airport.

Issued in Seattle, Washington, on November 14, 2017.

**Brian J. Johnson,**  
*Acting Manager, Operations Support Group,  
Western Service Center.*

[FR Doc. 2017-25310 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

[Docket No. USCG-2017-0944]

#### **Special Local Regulations; Charleston Harbor Christmas Parade of Boats, Charleston, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulation pertaining to the Charleston Harbor Christmas Parade of Boats on December 9, 2017. This action is necessary to ensure safety of life on navigable waters of the United

States during the Charleston Harbor Christmas Parade of Boats. During the enforcement period, and in accordance with previously issued special local regulations, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** The regulation in 33 CFR 100.701, Table to § 100.701, Item (g)(6) will be enforced on December 9, 2017 from 4 p.m. until 8 p.m.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, email [Justin.C.Heck@uscg.mil](mailto:Justin.C.Heck@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulation for the Charleston Harbor Christmas Parade of Boats in the Table to 33 CFR 100.701, item (g)(6), from 4 p.m. through 8 p.m. on December 9, 2017.

Under the provisions of 33 CFR 100.701, no vessels or people may enter into, transit through, anchor in, or remain within the regulated area, unless authorized to do so by the Captain of the Port Charleston or a designated representative. Only event sponsors, designated participants, and official patrol vessels are allowed to enter the regulated area. This rule creates a regulated area that will encompass a portion of the waterways during the parade transit from Charleston Harbor Anchorage A through Bennis Reach, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina. Spectator vessels may safely transit outside the regulated area, but may not anchor in, block, loiter in, or impede the transit of parade participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552 (a). The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: November 20, 2017.

**J.W. Reed,**  
*Captain, U.S. Coast Guard, Captain of the Port, Charleston.*

[FR Doc. 2017-25533 Filed 11-24-17; 8:45 am]

**BILLING CODE 9110-04-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

[Docket No. USCG-2017-0595]

#### **Drawbridge Operation Regulation; Jamaica Bay, Queens, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation; cancellation.

**SUMMARY:** The Coast Guard is canceling the temporary deviation concerning the Marine Parkway (Gil Hodges) Bridge across the Rockaway Inlet, mile 3.0, at Queens, NY. The deviation cancellation is necessary to accommodate Metropolitan Transportation Authority's (MTA) (the bridge owner) unexpected emergency repairs requiring a complete closure of the Bridge and an extension of time for their completion. This cancellation is necessary so a temporary interim rule may be approved due to the requested extension exceeding the 180 day limit for deviations. Existing federal regulations do not allow back-to-back deviations.

**DATES:** The temporary deviation published on July 6, 2017 (82 FR 31255), is cancelled as of 12:01 a.m. on November 27, 2017.

**ADDRESSES:** The docket for this deviation, USCG-2017-0595 is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Judy K. Leung-Yee, Bridge Management Specialist, U.S. Coast Guard; telephone 212-514-4336, email [Judy.K.Leung-Yee@uscg.mil](mailto:Judy.K.Leung-Yee@uscg.mil).

**SUPPLEMENTARY INFORMATION:** On July 6, 2017, we published a temporary deviation entitled, "Drawbridge Operation Regulation; Marine Parkway Bridge, Jamaica Bay, Queens, NY" in the **Federal Register** (82 FR 31255). The temporary deviation concerned the bridge owner's rehabilitation work associated with the replacement of lift span machinery. This deviation from the operating regulations was authorized under 33 CFR 117.35.

During the recent replacement/rehabilitation of lift span systems, water was discovered inside the power and communication cables from the main electrical rooms on the lower level of the towers to the machinery rooms at the tops of the towers. In addition,

structural steel for riser conduit support was discovered to be in need of immediate repairs and/or replacement. Therefore, more time is needed to complete the job, conduct tests, and inspections. The subject temporary deviation will be replaced with a temporary interim rule because an extension of time could not be approved, as it exceeds the 180 day limit.

Dated: November 21, 2017.

**Christopher J. Bisignano,**

*Supervisory Bridge Management Specialist,  
First Coast Guard District.*

[FR Doc. 2017-25532 Filed 11-24-17; 8:45 am]

BILLING CODE 9110-04-P

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 380

[Docket No. 14-CRB-0001-WR (2016-2020)  
(COLA 2018)]

#### Cost of Living Adjustment to Royalty Rates for Webcaster Statutory License

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) in the royalty rates that commercial and noncommercial noninteractive webcasters pay for eligible transmissions pursuant to the statutory licenses for the public performance of and for the making of ephemeral reproductions of sound recordings.

**DATES:** *Effective Date:* January 1, 2018.

*Applicability Dates:* These rates are applicable to the period January 1, 2018, through December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Whittle, Attorney Advisor, by telephone at (202) 707-7658 or by email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** Sections 112(e) and 114(f) of the Copyright Act, title 17 of the United States Code, create statutory licenses for certain digital performances of sound recordings and the making of ephemeral reproductions to facilitate transmission of those sound recordings. On May 2, 2016, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under those licenses for the license period 2016-2020 for performances of sound recordings via eligible transmissions by commercial

and noncommercial noninteractive webcasters. See 81 FR 26316.

Pursuant to those regulations, at least 25 days before January 1 of each year from 2017 to 2020, the Judges shall publish in the **Federal Register** notice of a COLA applicable to the royalty fees for performances of sound recordings via eligible transmissions by commercial and noncommercial noninteractive webcasters. 37 CFR 380.10(a)(1)-(2).

The adjustment in the royalty fee shall be based on a calculation of the percentage increase in the CPI-U from the CPI-U published in November 2015 (237.838), according to the formula  $(1 + (C_y - 237.838)/237.838) \times R_{2016}$ , where  $C_y$  is the CPI-U published by the Secretary of Labor before December 1 of the preceding year and  $R_{2016}$  is the royalty rate for 2016 (*i.e.*, \$0.0022 per subscription performance or \$0.0017 per nonsubscription performance). The adjustment shall be rounded to the nearest fourth decimal place. 37 CFR 380.10(c) (as revised herein). The CPI-U published by the Secretary of Labor from the most recent index published before December 1, 2017, is 246.663.<sup>1</sup> Applying the formula in 37 CFR 380.10(c) and rounding to the nearest fourth decimal place results in an increase in the rates for 2018.

The 2018 rate for eligible transmission of sound recordings by commercial webcasters is a rate of \$0.0023 per subscription performance and a rate of \$0.0018 per nonsubscription performance.

Application of the increase to rates for noncommercial webcasters results in a 2018 rate of \$0.0018 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

As provided in 37 CFR 380.1(d), the royalty fee for making ephemeral recordings under section 112 of the Copyright Act to facilitate digital transmission of sound recordings under section 114 of the Copyright Act is included in the section 114 royalty fee and comprises 5% of the total fee.

#### List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

#### Final Regulations

In consideration of the foregoing, the Judges amend part 380 of title 37 of the Code of Federal Regulations as follows:

<sup>1</sup> As announced on November 15, 2017, by the Bureau of Labor Statistics in its *News Release—Consumer Price Index October 2017*, available at <http://www.bls.gov/news.release/pdf/cpi.pdf> at 4.

## PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

**Authority:** 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Section 380.10 is amended by revising paragraph (a) to read as follows:

#### § 380.10 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *Royalty fees.* For the year 2018, Licensees must pay royalty fees for all Eligible Transmissions of sound recordings at the following rates:

(1) *Commercial Webcasters:* \$0.0023 per performance for subscription services and \$0.0018 per performance for nonsubscription services.

(2) *Noncommercial webcasters.* \$500 per year for each channel or station and \$0.0018 per performance for all digital audio transmissions in excess of 159,140 ATH in a month on a channel or station.

\* \* \* \* \*

Dated: November 20, 2017.

**Suzanne M. Barnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2017-25480 Filed 11-24-17; 8:45 am]

BILLING CODE 1410-72-P

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 386

[Docket No. 17-CRB-0018-SA-COLA  
(2018)]

#### Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 2.0% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2016 to October 2017.

**DATES:** *Effective Date:* January 1, 2018.

*Applicability Dates:* These rates are applicable to the period January 1, 2018, through December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Whittle, Attorney Advisor, by telephone at (202) 707-7658 or by email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the distant retransmission of television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and has reauthorized the license for additional five-year periods, most recently with the passage of the STELA Reauthorization Act of 2014, Public Law 113-200.

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010-2014 term. See 75 FR 53198. The rates were proposed by Copyright Owners and Satellite Carriers<sup>1</sup> and were unopposed. *Id.* Section 119(c)(2) of the Copyright Act provides that, effective January 1 of each year, the Judges shall adjust the royalty fee payable under Section 119(b)(1)(B) “to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI-U] published by the Secretary of Labor before December 1 of the preceding year.” Section 119 also requires that “[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.” 17 U.S.C. 119(c)(2).

The change in the cost of living as determined by the CPI-U during the period from the most recent index published before December 1, 2016, to the most recent index published before December 1, 2017, is +2.0%.<sup>2</sup> Application of the 2.0% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—27 cents per subscriber per month—results in a rate of 28 cents per subscriber per month (rounded to the nearest cent). See 37 CFR 386.2(b)(1). Application of the 2.0% COLA to the current rate for viewing in commercial establishments—57 cents per subscriber per month—results in a rate of 58 cents per subscriber per month (rounded to the nearest cent). See 37 CFR 386.2(b)(2).

<sup>1</sup> Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC, comprised the Satellite Carriers.

<sup>2</sup> On November 15, 2017, the Bureau of Labor Statistics announced that the CPI-U increased 2.0% over the last 12 months.

**List of Subjects in 37 CFR Part 386**

Copyright, Satellite, Television.

**Final Regulations**

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

**PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS**

■ 1. The authority citation for part 386 continues to read as follows:

**Authority:** 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by adding paragraphs (b)(1)(ix) and (b)(2)(ix) as follows:

**§ 386.2 Royalty fee for secondary transmission by satellite carriers.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) \* \* \*
- (ix) 2018: 28 cents per subscriber per month.
- (2) \* \* \*
- (ix) 2018: 58 cents per subscriber per month.

Dated: November 20, 2017.

**Suzanne M. Barnett,**  
Chief Copyright Royalty Judge.

[FR Doc. 2017-25481 Filed 11-24-17; 8:45 am]

**BILLING CODE 1410-72-P**

**POSTAL SERVICE****39 CFR Part 111****New Mailing Standards for Domestic Mailing Services Products**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** On October 6, 2017, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC) in Docket No. R2018-1. On October 13, 2017 the Postal Service published a proposed rule containing the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) that we planned to adopt to implement rule changes coincident with the price adjustments.

**DATES:** Effective: January 21, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Erwin at (202) 268-2158, or Lizbeth Dobbins at (202) 268-3789.

**SUPPLEMENTARY INFORMATION:** On November 9, 2017, the PRC found that the price adjustments proposed by the Postal Service may take effect as planned. The price adjustments and

DMM revisions are scheduled to become effective on January 21, 2018. Final prices are available under Docket No. R2018-1 (Order No. 4215) on the Postal Regulatory Commission's Web site at [www.prc.gov](http://www.prc.gov). The Postal Service's final rule includes: a change to the pallet preparation for Carrier Route (CR) Pallets in Non-FSS Zones, a change to add Bound Printed Matter Flats up to 24 ounces to comail with USPS Marketing Mail and Periodicals (DSCF or DDU only), and a Zone chart revision for Priority Mail to APO/FPO/DPO processing at Chicago ISC.

**Comments on Proposed Changes and USPS Response**

The Postal Service received 1 formal comment on the October 13, 2017 proposed rule.

*Zone Charts Revision: Priority Mail to APO/FPO/DPO Processing at Chicago ISC*

One comment requested that the Postal Service reconsider changing APO/FPO/DPO mail processing at Chicago ISC, based on needing more study on negative, financial consequences on US Service members, their families and businesses that serve them.

**USPS Response**

The Postal Service is revising Zone charts for Priority Mail to APO/FPO/DPO, which is processed at the Chicago ISC, based on operational needs. This revision reflects current operations and is consistent with Title 39 and former Postal Rate Commission precedent regarding the alignment of rates and costs for mail classification. It is necessary to align rates and costs for Priority Mail addressed to APO/FPO/DPO destinations, and eliminate inconsistencies between rates and costs for such Priority Mail.

The Proposed Rule is not a sudden, unforeseeable change in policy. The transfer of processing operations to the Chicago ISC, and the resulting inconsistency between Zone classification and transportation costs, occurred in 2013. For over three years, mailers had an opportunity to assess the potential impact of this change on future operations, and some businesses responded to the change by relocating their operations in anticipation of a potential reclassification of zones necessary to align rates and costs.

The resulting changes to DMM 608 are shown below.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.



The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

\* \* \* \* \*

**200 Commercial Mail Letters, Cards, Flats, and Parcels**

**201 Physical Standards**

\* \* \* \* \*

**5.0 Physical Standards for Nonautomation Flats**

\* \* \* \* \*

**5.3 Bound Printed Matter**

These additional standards apply to Bound Printed Matter:

\* \* \* \* \*

[Revise the text of item b to read as follows:]

b. Bound Printed Matter may not weigh more than 20 ounces (except under 705.15).

\* \* \* \* \*

**6.0 Physical Standards for Automation Flats**

\* \* \* \* \*

**6.2 Additional Criteria for Automation Flats**

\* \* \* \* \*

**6.2.2 Maximum Weight**

Maximum weight limits are as follows:

\* \* \* \* \*

[Revise the text of item d to read as follows:]

d. For Bound Printed Matter, 20 ounces (except under 705.15).

\* \* \* \* \*

**600 Basic Standards for All Mailing Services**

\* \* \* \* \*

**608 Postal Information and Resources**

\* \* \* \* \*

**9.0 Postal Zones**

\* \* \* \* \*

**9.2 Application**

\* \* \* \* \*

a. For the purposes of computing postal zone information, except for items 9.2b and 9.2c, the following table applies to MPOs not listed in L005.

[Revise the ZIP Code groups listed under the “3-DIGIT ZIP CODE PREFIX GROUP” column by adding asterisks and add a new footnote to read as follows:]

**3-DIGIT ZIP CODE PREFIX GROUP**

090–098\*

340

962–966\*

\* Priority Mail service destined to these ZIP Codes is served by SCF Chicago IL 606.

[Revise the text of item b to read as follows:]

b. The postage prices for zoned mail transported between the United States, the Canal Zone, Puerto Rico, or U.S. territories or possessions, including the Freely Associated States on the one hand, and MPOs on the other, or, among the MPOs, are the applicable zone prices for mail between the place of mailing or delivery and the city of the postmaster serving the MPO concerned.

\* \* \* \* \*

**700 Special Standards**

\* \* \* \* \*

**705 Advanced Preparation and Special Postage Payment Systems**

\* \* \* \* \*

**10.0 Merging Bundles of Flats Using the City State Product**

**10.1 Periodicals**

\* \* \* \* \*

**10.1.5 Pallet Preparation and Labeling**

[Revise the second sentence in the introductory text of 10.1.5 to read as follows:]

\* \* \* When sortation under this option is performed, after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product. \* \* \*

[Reverse the order of items a. and b.; and revise the text of reordered items a. and b. to read as follows:]

a. 5-digit scheme carrier routes, required; optional with no minimum.

May contain only carrier route bundles for carrier routes for 5-digit ZIP Codes identified in the L001 5-digit scheme listing. Labeling:

1. Line 1: Use L001, Column B.  
2. Line 2: “PER” or “NEWS” as applicable; followed by “FLTS”; followed by “CR–RTS SCHEME.”

b. Merged 5-digit scheme, required and permitted only when there is at least one 5-digit ZIP Code in the scheme that has an “A” or “C” indicator in the City State Product. May contain carrier route bundles for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as machinable barcoded price 5-digit bundles and machinable nonbarcoded price 5-digit bundles for those 5-digit ZIP Codes in the scheme that have an “A” or “C” indicator in the City State Product. Labeling:

1. Line 1: Use L001, Column B.  
2. Line 2: “PER” or “NEWS” as applicable; followed by “FLTS”; followed by “CR/5D SCHEME.”

[Reverse the order of items c and d; and revise the text of reordered item c to read as follows:]

c. 5-digit carrier routes, required; optional with no minimum. May contain only carrier route price bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme. Labeling:

1. Line 1: Use city, state, and 5-digit ZIP Code destination (see 8.6.4 for military mail).

2. Line 2: “PER” or “NEWS” as applicable; followed by “FLTS”; followed by “CARRIER ROUTES” or “CR–RTS.”

\* \* \* \* \*

**10.2 USPS Marketing Mail**

\* \* \* \* \*

**10.2.5 Pallet Preparation and Labeling**

[Revise the first two sentences of the introductory text of 10.2.5 to read as follows:]

Mailers must prepare pallets of bundles in the manner and sequence listed below and under 8.0. When sortation under this option is performed, after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product. \* \* \*

[Reverse the order of items a and b; and revise the text in reordered items a and b to read as follows:]

a. 5-digit scheme carrier routes, required; optional with no minimum. May contain only carrier route bundles for carrier routes for 5-digit ZIP Codes

identified in the L001 5-digit scheme listing. Labeling:

1. *Line 1:* Use L001, Column B.
  2. *Line 2:* "MKT FLTS CR-RTS SCHEME."
- b. *Merged 5-digit scheme*, required and permitted only when there is at least one 5-digit ZIP Code in the scheme that has an "A" or "C" indicator in the City State Product. May contain carrier route bundles for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation price 5-digit bundles and Presorted price 5-digit bundles for those 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product. Labeling:
1. *Line 1:* Use L001, Column B.
  2. *Line 2:* "MKT FLTS CR/5D SCHEME."

[Reverse the order of items c and d; and revise the text of reordered item c to read as follows:]

c. *5-digit carrier routes*, required; optional with no minimum. May contain only carrier route price bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme. Labeling:

1. *Line 1:* Use city, state, and 5-digit ZIP Code destination (see 8.6.4 for military mail).
2. *Line 2:* "MKT FLTS," followed by "CARRIER ROUTES" or "CR-RTS."

**12.0 Merging Bundles of Flats on Pallets Using a 5% Threshold**

**12.1 Periodicals**

\* \* \* \* \*

**12.1.5 Pallet Preparation and Labeling**

[Revise the second sentence in the introductory text of 12.1.5 to read as follows:]

\* \* \* When sortation under this option is performed, after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and the 5% threshold, as applicable. \* \* \*

Prepare and label pallets as follows: [Reverse the order of items a and b; and revise the text of reordered items a. and b. to read as follows:]

- a. *5-digit scheme carrier routes*, required; optional with no minimum. May contain only carrier route bundles for all carrier routes for 5-digit ZIP Codes identified in the L001 5-digit scheme listing. Labeling:
  1. *Line 1:* Use L001, Column B.
  2. *Line 2:* "PER" or "NEWS" as applicable; followed by "FLTS" or

"IRREG" as applicable; followed by "CR-RTS SCHEME."

- b. *Merged 5-digit scheme*, required;
  - \* \* \* For 5-digit ZIP Codes not included in a scheme, begin preparing pallets under 12.1.5e (merged 5-digit pallet). Labeling:
    1. *Line 1:* use L001, Column B.
    2. *Line 2:* "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "CR/5D SCHEME."

\* \* \* \* \*

[Reverse the order of items d and e; and revise the text of reordered item d to read as follows:]

d. *5-digit carrier routes*, required; optional with no minimum. May contain only carrier route price bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme. Labeling:

1. *Line 1:* Use city, state, and 5-digit ZIP Code destination (see 8.6.4 for military mail).
2. *Line 2:* "PER" or "NEWS" as applicable; followed by "FLTS" or "IRREG" as applicable; followed by "CARRIER ROUTES" or "CR-RTS."

\* \* \* \* \*

[Add new heading 12.2, USPS Marketing Mail, renumber 12.1.6 through 12.1.8 as 12.2.1 through 12.2.3]

**12.2 USPS Marketing Mail**

\* \* \* \* \*

**12.2.3 Pallet Preparation and Labeling**

[Revise the second sentence in the introductory text of renumbered 12.2.3 to read as follows:]

\* \* \* When sortation under this option is performed after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and the 5% threshold. \* \* \*

[Reverse the order of items a and b; and revise the text in reordered items a. and b. to read as follows:]

- a. *5-digit scheme carrier routes*, required, optional with no minimum. May contain only carrier route bundles for carrier routes for 5-digit ZIP Codes identified in the L001 5-digit scheme listing. Labeling:
  1. *Line 1:* Use L001, Column B.
  2. *Line 2:* "MKT FLTS CR-RTS SCHEME."
- b. *Merged 5-digit scheme*, required, permitted only when 5-digit bundles for at least one 5-digit ZIP Code in the scheme may be merged with carrier route bundles under the 5% threshold standard in 12.2.2. \* \* \* For 5-digit ZIP

Codes not included in a scheme, begin preparing pallets under 12.2.3d (merged 5-digit pallet). Labeling:

1. *Line 1:* Use L001, Column B.
2. *Line 2:* "MKT FLTS CR/5D SCHEME."

\* \* \* \* \*

[Reverse the order of items c and d; and revise the text of reordered item c to read as follows:]

c. *5-digit carrier routes*, required, optional with no minimum. May contain only carrier route price bundles for the same 5-digit ZIP Code for those 5-digit ZIP codes that are not part of a scheme. Labeling:

1. *Line 1:* Use city, state, and 5-digit ZIP Code destination (see 8.6.4 for military mail).
2. *Line 2:* "MKT FLTS"; followed by "CARRIER ROUTES" or "CR-RTS."

\* \* \* \* \*

**13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5% Threshold**

**13.1 Periodicals**

**13.1.1 Basic Standards**

\* \* \* \* \*

[Revise the text of item e to read as follows:]

e. After completing all possible required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme and 5-digit scheme pallets according to standards in 13.1.5.

\* \* \* \* \*

**13.1.5 Pallet Preparation and Labeling**

[Revise the second sentence in the introductory text of 13.1.5 to read as follows:]

\* \* \* When sortation under this option is performed, after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination (8.0) using L001, the City State Product, and the 5% threshold (13.1.4), as applicable. \* \* \* Prepare and label pallets as follows:

\* \* \* \* \*

[Reverse the order of items a and b; and revise the text of reordered item a to read as follows:]

- a. *5-digit scheme carrier routes*, required, optional with no minimum. May contain only carrier route bundles for carrier routes for 5-digit ZIP Codes identified in the L001 5-digit scheme listing. Labeling:
  1. *Line 1:* Use L001, Column B.
  2. *Line 2:* "PER" or "NEWS" as applicable; followed by "FLTS" or

“IRREG” as applicable; and followed by “CR-RTS SCHEME.”

\* \* \* \* \*

[Reverse the order of items d and e; revise the text of reordered item d to read as follows:]

d. 5-digit carrier routes, required; optional with no minimum. May contain only carrier route price bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme. Labeling:

1. Line 1: Use city, state, and 5-digit ZIP Code destination (see 8.6.4 for military mail).

2. Line 2: “PER” or “NEWS” as applicable; followed by “FLTS” or “IRREG” as applicable; and followed by “CARRIER ROUTES” or “CR-RTS.”

\* \* \* \* \*

13.2 USPS Marketing Mail

\* \* \* \* \*

13.2.4 Pallet Preparation and Labeling

[Revise the second sentence of the introductory text of 13.2.4 to read as follows:]

\* \* \* When sortation under this option is performed after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001, the City State Product, and the 5% threshold. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

[Reverse the order of items a and b; revise the text of reordered item a. to read as follows:]

a. 5-digit scheme carrier routes, required, optional with no minimum. May contain only carrier route bundles for carrier routes for 5-digit ZIP Codes identified in the L001 5-digit scheme listing. Labeling:

1. Line 1: Use L001, Column B.

2. Line 2: “MKT FLTS CR-RTS SCHEME.”

\* \* \* \* \*

[Reverse the order of items c and d; revise the text of reordered item c to read as follows:]

c. 5-digit carrier routes, required, optional with no minimum. May contain only carrier route price bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme. Labeling:

1. Line 1: Use city, state, and 5-digit ZIP Code destination (see 8.6.4 for military mail).

2. Line 2: “MKT FLTS,” followed by “CARRIER ROUTES or “CR-RTS.”

\* \* \* \* \*

[Revise the heading of 15.0 to read as follows:]

15.0 Combining USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats

15.1 Basic Standards

[Revise the introductory text of 15.1 to read as follows:]

Authorized mailers may combine USPS Marketing Mail flats, Bound Printed Matter flats, and Periodicals flats in a single mailing as follows:

[Revise the text in item a to read as follows:]

a. Each mailpiece must meet the standards in 240 for USPS Marketing Mail, 260 for Bound Printed Matter and 207 for Periodicals. Periodicals publications must be authorized or pending original or additional entry at the office of mailing.

[Revise the text of item b by adding a new last sentence to read as follows:]

b. \* \* \* For exceptions to bundling contact the Pricing and Classification Service Center (see 608.8.0).

\* \* \* \* \*

[Revise the text of item e to read as follows:]

e. Each mailing must include at least 200 pieces or 50 pounds of USPS Marketing Mail and/or at least 300 pieces of Bound Printed Matter mail, when USPS Marketing Mail and/or Bound Printed Matter are combined within a mailing.

\* \* \* \* \*

[Add new item h, to read as follows:]

h. Each comailing containing Bound Printed Matter flats must: 1. Be entered at a destination sectional center facility (DSCF) or a destination delivery unit (DDU) (Presorted DDU prices are not available for flats that weigh 1 pound or less).

a. When prepared and entered at a destination sectional center facility (DSCF) at 5-digit, 3-digit/SCF level pallets, BPM pieces should weigh no more than 20 ounces.

1. Heavier BPM pieces, (pieces greater than 20 ounces and less than 24 ounces) in comail can only be placed in CR level bundles on a pallet included in no less than SCF/3D sortation entered at an SCF.

2. Not exceed the maximum weight of 24 ounces per piece within the same bundle, when comailed with Periodicals pieces.

a. The maximum number of heavier pieces would be no more than half of each bundle. (Half of the bundle can have BPM pieces that weigh 20-24 ounces).

b. The maximum bundle weight is 20 pounds.

15.1.1 Service Objectives

[Revise the text in 15.1.1 to read as follows:]

The Postal Service processes combined mailings of USPS Marketing Mail, Bound Printed Matter, and Periodicals flats to the service standards of USPS Marketing Mail.

15.1.2 Postage Payment

[Revise the first sentence of 15.1.2 to read as follows:]

Postage for all USPS Marketing Mail and Bound Printed Matter pieces must be paid with permit imprint using a special postage payment system in 2.0 through 4.0 at the Post Office location serving the mailer’s plant. \* \* \*

15.1.3 Documentation

\* \* \* In addition, mailers must provide:

\* \* \* \* \*

[Delete current item f. and renumber item g. to item f. to read as follows:]

f. Any additional documentation to support postage payment system records, if requested.

15.1.4 Authorization

[Revise the first sentence and add a new fourth sentence of 15.1.4 to read as follows:]

A mailer must submit a written request to the manager, Business Mailer Support (see 608.8.1 for address) to combine mailings of USPS Marketing Mail flats, Bound Printed Matter flats, and Periodicals flats. \* \* \* When requested, a mailer must submit a copy of a notification document signed and dated by the Periodicals publisher, acknowledging the mailer’s participation in a combined mailing of USPS Marketing Mail and Periodicals and the potential for the mailpieces to receive deferred USPS handling. \* \* \*

15.1.5 Price Eligibility

[Revise the first sentence in 15.1.5 to read as follows:]

Apply prices based on the standards in 240 for USPS Marketing Mail and 260 for Bound Printed Matter flats. \* \* \*

\* \* \* \* \*

[Revise the heading of 15.2 to read as follows:]

15.2 Combining USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats in the Same Bundle

\* \* \* \* \*

15.2.2 Mailpiece and Bundle Identification

[Revise the text in 15.2.2 to read as follows:]

Each USPS Marketing Mail, Bound Printed Matter, and Periodicals

mailpiece prepared under a combined mailing of USPS Marketing Mail flats, Bound Printed Matter flats, and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with the standards in 203.7.1.8. Post-print consolidators who have mailings of USPS Marketing Mail and Bound Printed Matter, using Permit Imprint may include a "Co-Class" marking.

\* \* \* \* \*

[Revise the heading of 15.3 to read as follows:]

### 15.3 Combining Bundles of USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats on the Same Pallet

\* \* \* \* \*

#### 15.3.2 Mailpiece and Bundle Identification

[Revise the introductory text in item a. in 15.3.2 to read as follows:]

Each USPS Marketing Mail, Bound Printer Matter, and Periodicals mailpiece prepared under a combined mailing of USPS Marketing Mail flats, Bound Printed Matter flats, and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with standards in 203.7.1.8. Post-print consolidators who have mailings of USPS Marketing Mail and Bound Printed Matter, using Permit Imprint may include a "Co-Class" marking.

\* \* \* \* \*

### 15.4 Pallet Preparation

#### 15.4.1 Pallet Preparation, Sequence and Labeling

[Revise the text in 15.4.1 to read as follows:]

When combining USPS Marketing Mail, Bound Printed Matter, and Periodicals flats within the same bundle or combining bundles of USPS Marketing Mail flats, Bound Printed Matter flats, and bundles of Periodicals flats on pallets, bundles must be placed on pallets. For labeling, "'MKT/BPM/PER FLTS', as applicable' means to label each individual pallet based on the classes of mailpieces on that individual pallet. As an example, in a combined mailing of USPS Marketing Mail, Bound Printed Matter, and Periodicals flats, some pallets may be labeled "MKT/BPM/PER" while others might properly be labeled "MKT/BPM," "MKT/PER," "BPM/PER," or even "MKT," "BPM," or "PER."

Preparation, sequence and labeling:

a. 5-digit scheme carrier routes, required. \* \* \* Labeling:

\* \* \* \* \*

[Revise item a 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable; \* \* \*

b. Merged 5-digit scheme, optional.

\* \* \* Labeling:

\* \* \* \* \*

[Revise item b 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS CR/5D," as applicable \* \* \*

c. Merged 5-digit, optional.

\* \* \* Labeling:

\* \* \* \* \*

[Revise item c 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable; \* \* \*

d. 5-digit carrier routes, required.

\* \* \* Labeling:

\* \* \* \* \*

[Revise item d 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable; \* \* \*

e. 5-digit, required. \* \* \* Labeling:

\* \* \* \* \*

[Revise item e 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable; \* \* \*

f. 3-digit, optional, \* \* \* Labeling:

\* \* \* \* \*

[Revise item f 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable; \* \* \*

g. SCF, required. \* \* \* Labeling:

\* \* \* \* \*

[Revise item g 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable; \* \* \*

h. ASF, required unless bundle reallocation used under 15.1.10. \* \* \* Labeling:

\* \* \* \* \*

[Revise item h 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS NDC," as applicable; \* \* \*

\* \* \* \* \*

[Revise item i to read as follows:]

i. NDC, required. Pallet may contain carrier route, automation or presorted mail for the 3-digit ZIP Code groups in L601. \* \* \* Labeling:

\* \* \* \* \*

[Revise item i 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS NDC," as applicable; \* \* \*

\* \* \* \* \*

[Revise item j to read as follows:]

j. Mixed NDC, required, 100 pound minimum. Pallet may contain carrier route, automation or presorted mail.

\* \* \* Labeling:

\* \* \* \* \*

[Revise item j 2 to read as follows:]

2. Line 2: "MKT/BPM/PER FLTS," as applicable;

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017-25488 Filed 11-24-17; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2017-0386; FRL-9971-16-Region 7]

### Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

**SUMMARY:** Due to adverse comments, the Environmental Protection Agency (EPA) is withdrawing the direct final rule for "Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code" published in the **Federal Register** on October 5, 2017. Nebraska's SIP revision added a new chapter titled "Visibility Protection" which provides Nebraska authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART). The new chapter incorporates by reference EPA's Guidelines for BART Determinations under the Regional Haze Rule. The revision to the SIP meets the visibility component of the Clean Air Act (CAA).

**DATES:** The direct final rule published at 82 FR 46415, October 5, 2017, is withdrawn effective November 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7391, or by email at [crable.gregory@epa.gov](mailto:crable.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Due to adverse comments, EPA is withdrawing the direct final rule to approve revisions to the Nebraska State Implementation Plan (SIP). In the direct final rule published on October 5, 2017 (82 FR 46415), we stated that if we received adverse comment by November 6, 2017, the rule would be withdrawn and not take effect. EPA received adverse comments. EPA will address the comments in a subsequent final action

based upon the proposed action also published on October 5, 2017 (82 FR 46433).

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

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

Dated: November 16, 2017.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

■ Accordingly, the direct final rule published at 82 FR 46415, October 5, 2017, is withdrawn effective November 27, 2017.

[FR Doc. 2017-25428 Filed 11-24-17; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 120404257-3325-02]

**RIN 0648- XF854**

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2017 Commercial Accountability Measure and Closure for South Atlantic Golden Tilefish Hook-and-Line Component**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures for the commercial hook-and-line component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial hook-and-line landings for golden tilefish will reach the hook-and-line component's commercial annual catch limit (ACL) on November 29, 2017. Therefore, NMFS closes the commercial hook-and-line component for golden tilefish in the South Atlantic EEZ on November 29, 2017, and it will remain closed until the start of the next fishing year on January 1, 2018. This closure is necessary to protect the golden tilefish resource.

**DATES:** This rule is effective 12:01 a.m., local time, November 29, 2017, until 12:01 a.m., local time, January 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *mary.vara@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 23, 2013, NMFS published a final rule for Amendment 18B to the FMP (78 FR 23858). Amendment 18B to the FMP established a longline endorsement program for the commercial golden tilefish component of the snapper-grouper fishery and allocated the commercial golden tilefish ACL among two gear types, the longline and hook-and-line components.

The commercial ACL (equivalent to the commercial quota) for the hook-and-line component for golden tilefish in the South Atlantic is 135, 324 lb (61,382 kg), gutted weight, for the current fishing year, January 1 through December 31, 2017, as specified in 50 CFR 622.190(a)(2)(ii).

Under 50 CFR 622.193(a)(1)(i), NMFS is required to close the commercial hook-and-line component for golden tilefish when the hook-and-line component's commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for the hook-and-line component for golden tilefish in the South Atlantic will be reached by November 29, 2017. Accordingly, the commercial hook-and-line component for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, November 29, 2017, until 12:01 a.m., local time, January 1, 2018.

The commercial longline component for South Atlantic golden tilefish closed on May 9, 2017, for the remainder of the current fishing year, until 12:01 a.m., local time, January 1, 2018 (82 FR 21316; May 8, 2017). Therefore, because the commercial longline component is already closed, and NMFS is closing the commercial hook-and-line component through this temporary rule, all commercial fishing for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, November 29, 2017, until 12:01 a.m., local time, January 1, 2018.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, November 29, 2017. During the closure, the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of golden tilefish that were harvested by hook-and-line, landed ashore, and sold prior to 12:01 a.m., local time, November 29, 2017, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for golden tilefish would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c).

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(a)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial hook-and-line component for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL for the hook-and-line component, and there is a need to immediately implement this action to protect golden tilefish. Prior notice and

opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial ACL for the hook-and-line component.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 21, 2017.

**Emily H. Menashes,**

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

[FR Doc. 2017-25559 Filed 11-21-17; 4:15 pm]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 161020985-7181-02]

RIN 0648-XF851

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

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to

prevent exceeding the 2017 Pacific Ocean perch total allowable catch (TAC) in the Bering Sea subarea of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 21, 2017, through 2400 hrs, A.l.t., December 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

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

The 2017 Pacific ocean perch TAC in the Bering Sea subarea of the BSAI is 9,350 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017).

The Regional Administrator has determined that the 2017 TAC for Pacific ocean perch in the Bering Sea subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,335 mt, and is setting aside the remaining 15 mt as bycatch to support other anticipated groundfish fisheries. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Pacific ocean perch in the Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at

§ 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific Ocean perch in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as November 14, 2017.

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

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

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

Dated: November 21, 2017.

**Emily H. Menashes,**

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

[FR Doc. 2017-25562 Filed 11-21-17; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 82, No. 226

Monday, November 27, 2017

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 26, 50, 52, 73, and 140

[NRC-2015-0070]

RIN 3150-AJ59

### Regulatory Improvements for Power Reactors Transitioning to Decommissioning

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory basis.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is publishing a regulatory basis to support a rulemaking that would amend the NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide for an efficient decommissioning process; reduce the need for exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC staff; and support the principles of good regulation, including openness, clarity, and reliability.

**DATES:** The regulatory basis is available on November 27, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2015-0070 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0070. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-

available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto: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 the **SUPPLEMENTARY INFORMATION** section. The regulatory basis can be accessed in ADAMS at accession number ML17215A010.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**

Alysia G. Bone, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-1034, email: [Alysia.Bone@nrc.gov](mailto:Alysia.Bone@nrc.gov); U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:** On December 30, 2014, the Commission directed the NRC staff to proceed with a rulemaking on power reactor decommissioning in the staff requirements memorandum (SRM) for SECY-14-0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements" (ADAMS Accession No. ML14364A111). The Commission also stated that the rulemaking should address: Issues discussed in SECY-00-0145, "Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning" (ADAMS Accession No. ML003721626), such as the graded approach to emergency preparedness (EP); lessons learned from the plants that have already gone or are currently going through the decommissioning process; the advisability of requiring a licensee's post-shutdown decommissioning activities report (PSDAR) to be approved by the NRC; the appropriateness of maintaining the three existing options for decommissioning and the timeframes associated with those options; the appropriate role of state and local governments and non-governmental stakeholders in the decommissioning process; and any

other issues deemed relevant by the NRC staff.

The NRC issued an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (80 FR 72358; November 19, 2015) to obtain stakeholder feedback on the regulatory issues included in the SRM for SECY-14-0118. The NRC received public comments related to each of the regulatory issues outlined in the ANPR. Most public feedback pertained to the level of public involvement in the decommissioning process, the 60-year limit for power reactor decommissioning, the NRC's approval of the PSDAR, the use of decommissioning trust funds (DTFs), and EP considerations. The NRC reviewed the comments and used input received from the comments to develop the options presented in the draft regulatory basis, which was issued for a 90-day public comment period on March 15, 2017 (82 FR 13778). The NRC received input from stakeholders in every area addressed in the draft regulatory basis. The NRC also received the most stakeholder input on the current regulatory approach to decommissioning, EP, and DTFs. The comments received on the draft regulatory basis were considered in the development of the regulatory basis.

In the regulatory basis, the NRC staff concludes that it has sufficient justification to proceed with rulemaking in the areas of EP, physical security, cyber security, drug and alcohol testing, training requirements for certified fuel handlers (CFHs), DTFs, offsite and onsite financial protection requirements and indemnity agreements, and application of the backfit rule. Further, the NRC staff is recommending rulemaking: (1) to require that decommissioning documents in § 50.54(bb) of title 10 of the *Code of Federal Regulations* (10 CFR); § 50.82, "Termination of license"; and § 52.110, "Termination of license," or a combination thereof, contain information on spent fuel management planning, in accordance with the regulatory requirements in § 72.218, "Termination of Licenses"; (2) to amend § 51.53, "Postconstruction environmental reports," and § 51.95, "Postconstruction environmental impact statements," to clarify the environmental reporting requirements and add a reference to § 52.110; (3) to

amend §§ 50.82(a) and 52.110 to clarify that licensees must evaluate the environmental impacts of decommissioning, and whether they are bounded, in the PSDAR; (4) to amend § 50.59(d)(3); § 50.71(c); 10 CFR part 50, appendix A, Criterion 1, “Quality standards and records”; 10 CFR part 50, appendix B, Criterion XVII, “Quality Assurance Records”; and § 72.72(d) to remove certain record-retention requirements for structures, systems, and components (SSCs) that no longer remain in service during decommissioning, as well as duplication requirements for spent fuel storage records; and (5) to amend 10 CFR part 20, appendix G, Section III.E, for investigating shipments of low-level radioactive waste (LLW) if the shipper has not received notification of receipt within 20 days after transfer, to allow a 45-day notification window based on operating experience that shows this is a reasonable delay for LLW shipments.

Additionally in this regulatory basis, the NRC staff recommends guidance development and inspection procedure updates for minimum staffing of non-licensed operators and aging management of certain SSCs. The NRC staff also determined that fatigue management would not be addressed in this decommissioning rule.

In the regulatory basis, the NRC staff reiterated conclusions from the draft regulatory basis that regulatory activities other than rulemaking—such as guidance development—can be pursued to address the appropriate role of State and local governments in the decommissioning process, the level of NRC review of the PSDAR, and the 60-year limit for power reactor decommissioning.

In addition to the regulatory basis, staff plans to publish a revised preliminary draft of the regulatory analysis, which will update and refine the analysis of costs and benefits.

The NRC staff plans to publish a proposed rule for public comment in 2018.

Dated at Rockville, Maryland, this 21st day of November 2017.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Director, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2017–25552 Filed 11–24–17; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2017–1093; Product Identifier 2017–NM–018–AD]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by reports of early cracking on certain holes of the crossbeam splicing at certain fuselage frames. This proposed AD would require repetitive inspections for cracking of the fastener holes in certain fuselage frames, and depending on airplane configuration, would provide an optional terminating action to the repetitive inspections. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by January 11, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office–EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet: <http://www.airbus.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on

the availability of this material at the FAA, call 425–227–1221.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–1093; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2017–1093; Product Identifier 2017–NM–018–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0139, dated July 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Model A318 series airplanes; A319 series airplanes; A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

Following addition of a new airworthiness limitation item (ALI) task 531110 in the



Airworthiness Limitation Section (ALS) Part 2 in the revision dated April 2012, numerous findings have been reported of early cracks on the four holes of the crossbeam splicing at frame (FR)16 and FR20 on both left-hand (LH) and right-hand (RH) sides.

This condition, if not detected and corrected, could affect the structural integrity of the airframe.

To allow an earlier crack detection, Airbus decided to transfer the repetitive inspections from ALI task 531110 to Airbus Service Bulletin (SB) A320-53-1286, later revised, including new recommended inspection thresholds.

For the reasons described above, this [EASA] AD requires repetitive special detailed [rototest] inspections (SDI) of the two upper rows of fasteners of the crossbeam splicing at FR16 and FR20, on both LH and RH sides, [installation of new fasteners on crack-free frames, related investigative and corrective actions,] and, depending on aeroplane configuration, provides an optional terminating action to the repetitive inspections required by this [EASA] AD.

Related investigative actions include checking the edge margins of the holes. Corrective actions include reaming affected crossbeams and frames and cold working the frames. You may examine the MCAI in the AD docket on the Internet at <http://>

[www.regulations.gov](http://www.regulations.gov) by searching for and locating Docket No. FAA-2017-1093.

**Related Service Information Under 1 CFR Part 51**

Airbus has issued the following service information:

- Airbus Service Bulletin A320-53-1286, Revision 01, dated December 22, 2015, which describes procedures for rototest inspections for cracking of the holes in certain fuselage frames and crossbeams.
- Airbus Service Bulletin A320-53-1295, including Appendixes 01 and 02, dated June 29, 2015, which describes procedures for modifying the airplane, including cold working instructions in certain fuselage frames and crossbeams.

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

**FAA’s Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation

in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

**Difference Between This Proposed AD and the MCAI or Service Information**

Where the MCAI, paragraph (4), specifies a repair approved by EASA or under a Design Organization Approval (DOA) other than Airbus, paragraph (j) of this proposed AD refers to a repair approved by the FAA, EASA, or an EASA DOA other than Airbus. The MCAI did not specify whether FAA approved repairs are acceptable for compliance.

**Costs of Compliance**

We estimate that this proposed AD affects 928 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections .....	116 work-hours × \$85 per hour = \$9,860 per inspection.	\$960	\$10,820	\$10,040,960.
Optional Modification .....	28 work-hours × \$85 per hour = \$2,380 .....	3,020	5,400	Up to \$5,011,200.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

products identified in this rulemaking action.

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Airbus:** Docket No. FAA–2017–1093; Product Identifier 2017–NM–018–AD.

**(a) Comments Due Date**

We must receive comments by January 11, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and A321–

111, –112, –131, –211, –212, –213, –231, and –232 airplanes, certificated in any category, all manufacturer serial numbers, except the airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which Airbus modification 161255 has been embodied in production.

(2) Model A319 series airplanes on which Airbus modifications 28238, 28162, and 28342 have been concurrently embodied in production.

(3) Model A318 series airplanes on which Airbus modification 39195 has been embodied in production.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Reason**

This AD was prompted by reports of early cracking on the four holes of the crossbeam splicing at certain fuselage frames (FR). We are issuing this AD to detect and correct cracking at two upper rows of fasteners of the crossbeam splicing at FR16 and FR20, on both the left-hand (LH) and right-hand (RH)

sides, which can result in reduced structural integrity of the airplane due to the failure of structural components.

**(f) Compliance**

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

**(g) Repetitive Rototest Inspections**

Before exceeding the threshold specified in table 1 to paragraph (g) of this AD, or table 2 to paragraph (g) of this AD, as applicable to airplane configuration (pre- or post-modification 20416 or pre- or post-modification 21999): Do a special detailed (rototest) inspection of the two upper rows of fasteners of the crossbeam splicing at FR16 and FR20 on both LH and RH sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1286, Revision 01, dated December 22, 2015. Thereafter, repeat the inspection at the intervals specified in table 1 to paragraph (g) of this AD, or table 2 to paragraph (g) of this AD, as applicable to airplane configuration (pre- or post-modification 20416 or pre- or post-modification 21999).

TABLE 1 TO PARAGRAPH (g) OF THIS AD—INSPECTION OF PRE-MODIFICATION 20416 OR PRE-MODIFICATION 21999 AIRPLANES

Threshold (A or B or C, whichever occurs later).	A: Before exceeding 36,800 flight cycles (FC) or 73,600 flight hours (FH), whichever occurs first since the first flight of the airplane. B: Within 27,400 FC or 54,900 FH, whichever occurs first since the last inspection as specified in airworthiness limitation item (ALI) task 531110–01–1 accomplished before the effective date of this AD. C: Within 30 days after the effective date of this AD, without exceeding 38,800 FC or 77,600 FH, whichever occurs first since the first flight of the airplane.
Repetitive Inspection Interval (Not to exceed).	27,400 FC or 54,900 FH, whichever occurs first.

TABLE 2 TO PARAGRAPH (g) OF THIS AD—INSPECTION OF POST-MODIFICATION 20416 OR POST-MODIFICATION 21999 AIRPLANES

Threshold (A or B or C, whichever occurs later).	A: Before exceeding 34,700 FC or 69,400 FH, whichever occurs first since the first flight of the airplane. B: Within 12,900 FC or 25,800 FH, whichever occurs first since the last inspection as specified in ALI task 531110–01–2 accomplished before the effective date of this AD. C: Within 30 days after the effective date of this AD, without exceeding 38,900 FC or 77,900 FH, whichever occurs first since the first flight of the airplane.
Repetitive Inspection Interval (Not to exceed).	12,900 FC or 25,800 FH, whichever occurs first.

**(h) Post-Inspection Actions**

Depending on the results from any inspection required by paragraph (g) of this AD, do the actions in paragraphs (h)(1) or (h)(2) of this AD, as applicable.

(1) If, during any inspection required by paragraph (g) of this AD, any crack is detected: Before further flight, do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1286, Revision 01, dated December 22, 2015; except where Airbus Service Bulletin A320–53–1286, Revision 01, dated December 22, 2015, specifies to contact Airbus for appropriate repair, and specifies that action as “RC” (Required for Compliance), accomplish corrective actions before further flight in accordance with the procedures specified in

paragraph (r)(2) of this AD. Repair of an airplane as required by this paragraph does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD for that airplane, unless specified otherwise in the repair instructions.

(2) If, during any inspection required by paragraph (g) of this AD, no cracks are detected: Before further flight, do all applicable fastener installations, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1286, Revision 01, dated December 22, 2015.

**(i) Airplanes on Which Airbus Repair Instruction R53112926 Was Applied**

For airplanes on which Airbus Repair Instruction R53112926 at issue A or B was applied on the frame and/or crossbeam at FR16 LH or RH, or at FR20 LH or RH: Within

24 months after the effective date of this AD, modify the repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(j) Airplanes on Which a Repair With Installation of EN6114 Countersunk Fasteners Was Applied on the Frame and/or Crossbeam**

For airplanes on which a repair with installation of EN6114 countersunk fasteners, approved by the FAA, EASA, or an EASA DOA other than Airbus, was applied on the frame and/or crossbeam at FR16 LH or RH, or at FR20 LH or RH, in the area covered by

paragraph (g) of this AD: Within 24 months after the effective date of this AD, modify the repair using a method approved by the Manager, International Section, Transport Standards Branch FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**(k) Optional Terminating Action for Airplanes Post-Modification 20416 or Post-Modification 21999**

Modification of an airplane post-modification 20416 or post-modification 21999 in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-53-1295, including Appendixes 01 and 02, dated June 29, 2015, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for that airplane.

**(l) Post-Repair Actions for Certain Airplanes**

For an airplane that has been inspected per ALI task 531110 and repaired before the effective date of this AD using the instructions in an Airbus Repair Design Approval Sheet (RDAS): Within 30 days after the effective date of this AD, contact the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA for instructions and accomplish those instructions accordingly. If approved by the DOA, the approval must include the DOA-authorized signature. Accomplishment of the instructions required by this paragraph, does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD for that airplane, unless specified otherwise in the instructions.

**(m) Partial Terminating Action for Airplanes Post-Modification 20416 or Post-Modification 21999**

For an airplane post-modification 20416 or post-modification 21999, modification in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-53-1295, including Appendixes 01 and 02, dated June 29, 2015, for the applicable fastener holes, where no damage or cracks were detected (*i.e.*, those not repaired) during the latest inspection as required by paragraph (g) of this AD, constitutes terminating action for the repetitive inspections of those fastener holes as required by paragraph (g) of this AD for that airplane.

**(n) Actions for Airplanes With Certain Repairs**

For an airplane that has been repaired before the effective date of this AD in the areas described in this AD using the instructions in an Airbus RDAS unrelated to ALI task 531110: Before exceeding the compliance times specified in table 1 to paragraph (g) of this AD or table 2 to paragraph (g) of this AD, as applicable, contact the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus's EASA DOA for corrective action instructions and accomplish those instructions accordingly. If approved by the DOA, the approval must include the DOA-authorized signature. Accomplishment of corrective action(s) on an airplane, as

required by this paragraph, does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD for that airplane, as applicable, unless specified otherwise in the instructions.

**(o) Terminating Action for ALI Tasks**

(1) Accomplishment of an inspection as required by paragraph (g) of this AD or instructions as required by paragraph (l) of this AD, as applicable, constitutes terminating action for the inspection requirements of ALI task 531110, for that airplane.

(2) Modification of the two upper rows of fasteners of the crossbeam splicing at FR16 and FR20 on both LH and RH sides of an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-53-1295, including Appendixes 01 and 02, dated June 29, 2015, as specified in paragraphs (k) and (m) of this AD, constitutes terminating action for the inspection requirements of ALI task 531110, for those holes for that airplane.

**(p) No Reporting Requirement**

Although Airbus Service Bulletin A320-53-1286, Revision 01, dated December 22, 2015, specifies to submit certain information to the manufacturer, and specifies that action as "RC" (Required for Compliance), this AD does not include that requirement.

**(q) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320-53-1286, dated June 29, 2015.

**(r) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: Except as required by paragraphs (h)(1) and (p) of this AD: If any service information contains procedures or tests that are identified as RC,

those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(s) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016-0139, dated July 14, 2016, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1093.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet <http://www.airbus.com>. You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on November 7, 2017.

**Dionne Palermo,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2017-25252 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2015-1421; Product Identifier 2014-NM-177-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

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

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposal for certain The Boeing Company Model 767-300 and -300F

series airplanes. This action revises the notice of proposed rulemaking (NPRM) by adding new high frequency eddy current (HFEC) inspections for cracking of an expanded area of the lower outboard wing skin for certain airplanes. We are proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, we are reopening the comment period to allow the public the chance to comment on these changes.

**DATES:** The comment period for the NPRM published in the **Federal Register** on June 5, 2015 (80 FR 32066), is reopened.

We must receive comments on this SNPRM by January 11, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Aviation Partners Boeing, 2811 S. 102nd Street, Suite 200, Seattle, WA 98168; telephone 206-762-1171; Internet <https://www.aviationpartnersboeing.com>. You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1421; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this SNPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Allen Rauschendorfer, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6450; fax: 425-917-6590; email: [allen.rauschendorfer@faa.gov](mailto:allen.rauschendorfer@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-1421; Product Identifier 2014-NM-177-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. We will consider all comments received by the closing date and may amend this SNPRM because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this SNPRM.

##### Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767-300 and -300F series airplanes. The NPRM published in the **Federal Register** on June 5, 2015 (80 FR 32066). The NPRM was prompted by reports of fatigue cracking on airplanes with Aviation Partners Boeing winglets installed. The NPRM proposed to require an HFEC inspection for cracking of the lower outboard wing skin, and repair or modification if necessary. The NPRM also proposed to require one of three follow-on actions: repeating the HFEC inspections; modifying certain internal stringers and oversizing and plugging the existing fastener holes of the lower wing; or modifying the external doubler/tripler and doing repetitive post-modification inspections.

##### Actions Since the NPRM Was Issued

Since we issued the NPRM, we have determined that new HFEC inspections for cracking of an expanded area of the lower outboard wing skin are necessary to address the identified unsafe condition for certain airplanes.

Aviation Partners Boeing (APB) has released Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017. In the NPRM, we refer to APB Service Bulletin AP767-57-010, Revision 7, dated November 4, 2014, as the appropriate source of service

information for accomplishing the proposed actions. APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, corrects certain errors and omissions that were in the Accomplishment Instructions of APB Service Bulletin AP767-57-010, Revision 7, dated November 4, 2014, and provides clarification of certain procedures. APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, also removes all work related to stringer L-6.5 due to recent analysis that the modification was not sufficient to meet the 767 design service objective.

In light of this analysis, new repetitive post-modification HFEC inspections have been added for airplanes on which the optional terminating modification of the existing skin or external skin doubler has been done. We have revised this proposed AD to refer to APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, for accomplishing proposed actions for stringer L-9.5.

APB has also released Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017. APB Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, includes procedures for inspections, repair (modification), and repair of stringer L-6.5 of the lower outboard wing skin (which replace the actions that were removed from APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017).

##### Related Service Information Under 1 CFR Part 51

We reviewed APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017. The service information describes procedures for an HFEC inspection for cracking of the external surface of the lower outboard wing skin at stringer L-9.5 and on-condition actions that include repetitive HFEC inspections; modification by oversizing and plugging the existing fastener holes of the wing skin; repair (modification) of the stringer with new stringer; repair (modification) of the stringer with external doubler/tripler; repetitive post-repair inspections for cracking; and repair.

We also reviewed APB Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017. The service information describes procedures for an HFEC inspection for cracking of the lower outboard wing skin at stringer L-6.5 and on-condition actions that include repetitive HFEC inspections; repair (modification) of the stringer with new stringer; repetitive post-repair

HFEC inspections for cracking; and repair.

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

**Comments**

We gave the public the opportunity to participate in developing this proposed AD. We considered the comments received.

**Request To Clarify Service Information and Actions in the Proposed AD**

Multiple commenters (United Airlines, Delta Air Lines, American Airlines, Japan Airlines, FedEx, Boeing) requested that the actions specified in APB Service Bulletin AP767-57-010, Revision 7, dated November 4, 2014, be revised. Commenters noted that APB Service Bulletin AP767-57-010, Revision 7, dated November 4, 2014, contained multiple errors. United Airlines, Delta Air Lines, American Airlines and Boeing also requested that the actions specified in the proposed AD be revised for clarity because certain language in the proposed AD did not match the language in APB Service Bulletin AP767-57-010, Revision 7, dated November 4, 2014. APB stated APB Service Bulletin AP767-57-010, Revision 7, dated November 4, 2014, is being revised to include corrections and clarifications and additional work. APB recommend that we refer to updated service information.

We acknowledge the commenters' request and have revised this SNPRM to refer to the updated service information in APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, and APB Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017.

**Request To Allow Previously Approved Repairs**

American Airlines, APB, and Boeing requested that we give credit for repairs in the subject area that had received 8100-9 approval prior to the effective date of the AD.

We agree to give credit for repairs that we have determined will address the identified unsafe condition. We replaced the content of paragraph (i) of the proposed AD (in the NPRM) with

new content in this proposed AD to specify that repairs of the lower outboard wing skin done after June 15, 2017, and before the effective date of this AD, that are approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, are approved for the applicable repairs required by paragraphs (g) and (h) of this AD.

**Request To Allow Previous Modifications**

Air New Zealand requested that we give credit for accomplishing the proposed modification before the effective date of the AD by adding the required service information to paragraph (i) of the proposed AD, which specifies credit for previous actions.

We acknowledge the comment. However, no change to this proposed AD is necessary. Operators who accomplish the actions required by an AD using the required service information before the effective date of an AD are in compliance with the AD. Paragraph (f) of this proposed AD states "comply with this AD within the compliance times specified, unless already done." Credit for previous actions in ADs is used primarily to give credit for earlier revisions of required service information that are also acceptable for compliance if done before the effective date of the AD.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

**Proposed Requirements of This SNPRM**

This SNPRM would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between this Proposed Rule and the Service Information."

The compliance times vary depending on airplane configuration and inspection area. The shortest initial compliance time is the later of: 1,500 flight cycles or 7,500 flight hours after winglet installation, whichever occurs first; or 18 months after the effective date of the AD. Except for one group of airplanes, the longest initial compliance time is the later of: 7,800 flight cycles or 23,400 flight hours after installation of a certain modification, whichever occurs first; or 18 months after the effective date of the AD. For one group of airplanes, the longest initial compliance time is 29,000 total flight cycles or 111,000 total flight hours, whichever occurs first.

The shortest repetitive interval is 1,500 flight cycles or 7,500 flight hours, whichever occurs first. The longest repetitive interval is 12,000 flight cycles or 36,000 flight hours, whichever occurs first.

**Differences Between Proposed Rule and Service Information**

APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, and APB Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, specify to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes ODA whom we have authorized to make those findings.

Table 5a of paragraph 1.E., "Compliance," of APB Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, does not provide a grace period for airplanes that have exceeded a certain compliance time. We have added a grace period of 6 months to paragraph (g)(2) of this proposed AD.

**Costs of Compliance**

We estimate that this proposed AD affects 140 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS—REQUIRED ACTIONS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC Inspections .....	6 work-hours × \$85 per hour = \$510 .....	\$0	\$510	\$71,400

We estimate the following costs to do any necessary on-condition actions that would be required based on the results

of the proposed inspection. We have no way of determining the number of

aircraft that might need these on-condition actions.

#### ESTIMATED COSTS—ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Post-repair Inspections .....	6 work-hours × \$85 per hour = \$510 per inspection cycle .....	\$0	\$510
Repair/Modification .....	262 work-hours × 85 per hour = 22,270 .....	0	22,270

We have received no definitive data that would enable us to provide cost estimates for on-condition repairs for the post-repair inspections specified in this proposed AD.

#### Authority for This Rulemaking

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

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

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

#### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,  
 (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

#### List of Subjects in 14 CFR Part 39

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

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**The Boeing Company:** Docket No. FAA-2015-1421; Product Identifier 2014-NM-177-AD.

#### (a) Comments Due Date

We must receive comments by January 11, 2018.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to The Boeing Company Model 767-300 and -300F series airplanes, certificated in any category, with Aviation Partners Boeing winglets installed; as identified in Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017; and Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017.

#### (d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

#### (e) Unsafe Condition

This AD was prompted by reports of fatigue cracking in the lower outboard wing skin at the inboard fastener of stringer L-9.5, and the lower outboard wing skin of stringer L-6.5, on airplanes with winglets installed per Supplemental Type Certificate ST01920SE. We are issuing this AD to prevent fatigue cracking in the lower outboard wing skin, which could result in failure and subsequent separation of the wing and winglet and consequent reduced controllability of the airplane.

#### (f) Compliance

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

#### (g) Repetitive Stringer L-9.5 Inspections, Modification, Repair (Modification), Repetitive Post-Repair Inspections, and Repair

(1) For Group 1 and Group 2 airplanes identified in Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017: At the applicable time specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, except as required by paragraph (j)(1) of this AD: Do a high frequency eddy current (HFEC) inspection for cracking of the lower outboard wing skin at stringer L-9.5, in accordance with Part 1 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017.

(i) For airplanes on which "Condition 1" is found, as defined in the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, during any inspection required by paragraph (g)(1) or (g)(1)(i)(A) of this AD: Do the applicable actions required by paragraph (g)(1)(i)(A), (g)(1)(i)(B), (g)(1)(i)(C), or (g)(1)(i)(D) of this AD.

(A) Repeat the inspection specified in paragraph (g)(1) of this AD thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017.

(B) Do the applicable actions required by paragraphs (g)(1)(i)(B)(1), (g)(1)(i)(B)(2), and (g)(1)(i)(B)(3) of this AD.

(1) Before further flight, do actions (modifications and repair (modification)) in



procedures specified in paragraph (k) of this AD.

(2) For Group 3 airplanes identified in Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017: At the applicable time specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, or within 6 months after the effective date of this AD, whichever occurs later, do an HFEC inspection for cracking of the lower outboard wing skin at stringer L-9.5, in accordance with Part 7 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017. Repeat the inspection thereafter at the applicable time specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017. If any cracking is found during any inspection, repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD. An approved repair terminates the repetitive inspections required by paragraph (g)(2) of this AD.

**(h) Repetitive Stringer L-6.5 Inspections, Repair (Modification), Repetitive Post-Repair Inspections, and Repair**

(1) For airplanes identified in Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017: At the applicable time specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, except as required by paragraph (j)(2) of this AD: Do an HFEC inspection for cracking of stringer L-6.5 of the lower outboard wing skin, in accordance with Part 1 of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017. If no cracking is found, repeat the inspection thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, except as provided by paragraph (h)(3) of this AD.

(2) If any crack is found during any inspection required by paragraph (h)(1) of this AD, do the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD, and do all applicable actions required by paragraph (h)(2)(iii) of this AD.

(i) Before further flight, repair (modify) stringer L-6.5, in accordance with Part 2 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017.

(ii) At the applicable time specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, except as required by paragraph (j)(2) of this AD, do an HFEC post-repair inspection for cracking, in accordance with Part 3 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, and repeat the inspection thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017.

(iii) If any crack is found during any inspection required by paragraph (h)(2)(ii) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(3) As an option to the repetitive inspections required by paragraph (h)(1) of this AD, do the actions required by paragraphs (h)(3)(i) and (h)(3)(ii) of this AD, and do all applicable actions required by paragraph (h)(3)(iii) of this AD.

(i) Before further flight after accomplishing the most recent inspection required by paragraph (h)(1) of this AD, repair (modify) stringer L-6.5, in accordance with Part 2 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017.

(ii) At the applicable time specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, except as required by paragraph (j)(2) of this AD, do a post-repair HFEC inspection for cracking, in accordance with Part 3 of the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, and repeat the inspection thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017.

(iii) If any crack is found during any inspection required by paragraph (h)(3)(ii) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

**(i) Repair Approval**

Repairs of the lower outboard wing skin done after June 15, 2017, and before the effective date of this AD, that are approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, are approved for the applicable repairs required by paragraphs (g) and (h) of this AD.

**(j) Exceptions to Service Information Specifications**

(1) Where paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-010, Revision 11, dated April 3, 2017, specifies a compliance time of "after the issue date of Revision 11 of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where paragraph 1.E., "Compliance," of Aviation Partners Boeing Service Bulletin AP767-57-014, Revision 1, dated April 12, 2017, specifies a compliance time of "after the initial issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with

14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraphs (g)(1)(i)(B)(3), (g)(1)(i)(C)(3), (g)(1)(i)(D)(3), (g)(1)(ii)(A)(3), (g)(1)(ii)(B)(3), (g)(1)(iii)(A)(3), (g)(1)(iii)(B)(3), (g)(1)(iv), (g)(2), (h)(2)(iii), and (h)(3)(iii) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(l) Related Information**

(1) For more information about this AD, contact Allen Rauschendorfer, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6450; fax: 425-917-6590; email: allen.rauschendorfer@faa.gov.

(2) For service information identified in this AD, contact Aviation Partners Boeing, 2811 S. 102nd Street, Suite 200, Seattle, WA 98168; telephone 206-762-1171; Internet <https://www.aviationpartnersboeing.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on November 3, 2017.

**Jeffrey E. Duven,**

*Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2017-24502 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-13-P**



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2017-0802; Airspace Docket No. 17-ASO-18]

**Proposed Amendment of Class E Airspace, Clanton, AL**

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

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

**SUMMARY:** This action proposes to amend Class E airspace at Chilton County Airport (formerly Gragg-Wade Field Airport), Clanton, AL, to accommodate airspace reconfiguration due to the decommissioning of the Gragg-Wade non-directional radio beacon (NDB), and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport.

**DATES:** Comments must be received on or before January 11, 2018.

**ADDRESSES:** Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590; Telephone: (800) 647-5527, or (202) 366-9826. You must identify the Docket No. FAA-2017-0802; Airspace Docket No. 17-ASO-18, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

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

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

**FOR FURTHER INFORMATION, CONTACT:** John Fornito, Operations Support

Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; 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 would amend Class E airspace at Chilton County Airport, Clanton, AL, to support IFR operations at the airport.

**Comments Invited**

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

Communications should identify both docket numbers (Docket No. FAA-2017-0802 and Airspace Docket No. 17-ASO-18) and be submitted in triplicate to DOT Docket Operations (see "ADDRESSES" section for the address and phone number.) You may also submit comments through the Internet at <http://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2017-0802; Airspace Docket No. 17-ASO-18." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the

public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

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

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

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet or more above the surface within a 7.7-mile radius (increased from a 6.3-mile radius) of Chilton County Airport, Clanton, AL, due to the decommissioning of the Gragg-Wade NDB, and cancellation of the NDB approach. The changes would enhance the safety and management of IFR operations at the airport. The geographic coordinates of the airport also would be adjusted to coincide with the FAA's aeronautical database, and the airport name would be updated to Chilton County Airport.

Class E airspace designations are published in Paragraph 6005 of FAA

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

### Regulatory Notices and Analyses

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

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

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

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

#### § 71.1 [Amended]

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

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

\* \* \* \* \*

#### ASO AL E5 Clanton, AL [Amended]

Chilton County Airport, AL  
(Lat. 32°51'02" N., long. 86°36'41" W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Chilton County Airport.

Issued in College Park, Georgia, on November 16, 2017.

**Ryan W. Almasy,**

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

[FR Doc. 2017–25309 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–0897; Airspace Docket No. 17–ANM–22]

#### Proposed Establishment of Class E Airspace; Spanish Fork, UT

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

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

**SUMMARY:** This action proposes to establish Class E airspace extending upward from 700 feet above the surface, at Spanish Fork Airport Springville-Woodhouse Field, Spanish Fork, UT, to accommodate new area navigation (RNAV) procedures at the airport. This action would ensure the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before January 11, 2018.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0897; Airspace Docket No. 17–ANM–22, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation

Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

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

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

### 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 would establish Class E airspace to support new RNAV procedures at Spanish Fork Airport Springville-Woodhouse Field, Spanish Fork, UT.

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to

Docket No. FAA–2017–0897; Airspace Docket No. 17–ANM–22”. The postcard will be date/time stamped and returned to the commenter.

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

#### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

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

#### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Spanish Fork Airport Springville-Woodhouse Field, Spanish Fork, UT, within a 6.5-mile radius of the airport. This proposed airspace is necessary to support the new RNAV procedures for runways 12 and 30 for the safety and management of IFR operations at the airport.

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

#### Regulatory Notices and Analyses

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

#### Environmental Review

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

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

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

##### **§ 71.1 [Amended]**

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and

effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

#### **ANM UT E5 Spanish Fork, UT [New]**

Spanish Fork Airport Springville-Woodhouse Field, UT

(Lat. 40°08’42” N., long. 111°40’04” W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Spanish Fork Airport Springville-Woodhouse Field.

Issued in Seattle, Washington, on November 14, 2017.

**Brian J. Johnson,**

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

[FR Doc. 2017–25419 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910–13–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA–R09–OAR–2017–0468; FRL–9971–20–Region 9]**

### **Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of lead-bearing fugitive dust from roads, storage piles and other activities associated with the primary copper smelter located in Hayden, Arizona. We are proposing to approve a state rule and associated appendix to regulate these emissions under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by December 27, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0468 at <http://www.regulations.gov>, or via email to Christine Vineyard, Rulemaking Office at [Vineyard.Christine@epa.gov](mailto:Vineyard.Christine@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](http://www.regulations.gov). For either manner

of submission, 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:** Christine Vineyard, EPA Region IX, (415) 947-4125, [vineyard.christine@epa.gov](mailto:vineyard.christine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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**I. The State’s Submittal**

*A. What rule and appendix did the State submit?*

Table 1 lists the rule and appendix addressed by this proposal with the dates that they were submitted by ADEQ.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Submitted
ADEQ .....	R18-2-B1301.01 ..	Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter .....	04/06/17
ADEQ .....	Appendix 15 .....	Test Methods for Determining Opacity and Stabilization of Unpaved Roads .....	04/06/17

On July 17, 2017 the EPA determined that the submittal for ADEQ Rule R18-2-B1301.01 and Appendix 15 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule and appendix?*

There are no previous versions of Rule 18-2-B1301.01 and Appendix 15 in the SIP.

*C. What is the purpose of the submitted rule and appendix?*

On November 12, 2008 the EPA published a final rule revising the lead National Ambient Air Quality Standards (NAAQS). The revisions to the primary and secondary lead NAAQS were to provide increased protection for children and other at-risk populations against an array of health effects including neurological effects. Section 110(a) of the CAA requires States to submit regulations that control lead emissions. ADEQ Rule R18-2-B1302.01 and Appendix 15 establish control requirements and test methods for lead-bearing fugitive dust sources at the Hayden primary copper smelter. The EPA’s technical support document (TSD) has more information about this rule and appendix.

**II. The EPA’s Evaluation and Action**

*A. How is the EPA evaluating the rule and appendix?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not

interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). On September 3, 2014 the EPA issued a final rule redesignating the Hayden, Arizona area to nonattainment for the 2008 lead NAAQS (79 FR 52205). Under CAA section 172(c)(1), the Arizona SIP must provide for implementation of all reasonably available control measures (RACM), including reasonably available control technology (RACT) for lead, and must provide for attainment of the NAAQS in the Hayden nonattainment area. The EPA will address the overall RACM/RACT requirement for the Hayden lead nonattainment area separately, in the context of our action on the “SIP Revision: Hayden Lead Nonattainment Area” submitted by ADEQ to the EPA on March 3, 2017. Therefore, our stringency evaluation considers whether Rule 18-2-B1301.01 implements reasonable controls for leaded fugitive dust at the Hayden primary copper smelter.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Addendum to the General Preamble for the Implementation of Title I of the

- Clean Air Act Amendments of 1990” (58 FR 67748, December 22, 1993).
2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. “Implementation of the 2008 Lead National Ambient Air Quality Standards Guide to Developing Reasonable Available Control Measures (RACM) for Controlling Lead Emissions,” EPA-457/R-12-001, March 2012.

*B. Do the rule and appendix meet the evaluation criteria?*

We have determined that the rule and appendix are consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. R18-2-B1301.01 establishes controls for lead-bearing fugitive dust emissions surrounding the Hayden copper smelter that include a facility-wide 20% opacity limit, wind fences for storage piles and chemical dust-suppression application for unpaved roads. Appendix 15 describes appropriate test methods to help ensure enforceability. We also have determined that R18-2-B1301.01 generally implements reasonably available controls for lead-bearing fugitive dust at the Hayden smelter. The TSD has more information on our evaluation.

### C. EPA Recommendations To Further Improve the Rule and Appendix

The TSD describes additional revisions that we recommend for the next time ADEQ modifies the rule and appendix.

### D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule and appendix because they fulfill all relevant requirements. We will accept comments from the public on this proposal until December 27, 2017. If we take final action to approve the submitted rule and appendix, our final action will incorporate them into the federally enforceable SIP.

### III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ADEQ rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

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

### List of Subjects in 40 CFR Part 52

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

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

Dated: November 16, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2017-25567 Filed 11-24-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[EPA-HQ-OW-2017-0584; FRL-9970-73-OW]

### State of Idaho Voluntary Transfer of Primacy of the Class II Underground Injection Control Program to the Environmental Protection Agency

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the transfer of the state of Idaho's Underground Injection Control (UIC) program for Class II injection wells from Idaho to EPA, and is concurrently issuing a proposed rule to amend EPA's UIC regulations to reflect such transfer. This transfer would be effective upon publication in the **Federal Register** of a final rule revising such regulations. Idaho submitted a formal request that EPA transfer and directly implement the Class II UIC Program. Idaho would maintain primacy for Class I, III, IV, and V injection wells pursuant to their EPA-approved program in 1985.

**DATES:** Comments must be received on or before January 11, 2018. A public hearing will be held only if there is significant public interest. Request for a public hearing will be accepted until December 12, 2017. *Only if requested*, a public hearing will be held on January 8, 2018, from 2 p.m. to 5 p.m., at the Banner Bank Building, 950 W. Bannock Street, Boise, Idaho. Requests for a public hearing may be mailed to: Evan Osborne, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., OCE-101, Seattle, Washington 98101. For additional information regarding the public hearing, please contact Evan Osborne (206) 553-1747 or [osborne.evans@epa.gov](mailto:osborne.evans@epa.gov).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2017-0584, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Colin Dyroff, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-3149; fax number: (202) 564-3754; email address: [dyroff.colin@epa.gov](mailto:dyroff.colin@epa.gov); or Evan Osborne, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., OCE-101, Seattle, Washington 98101; telephone number: (206) 553-1747; fax number: (206) 553-1762; email address: [osborne.evan@epa.gov](mailto:osborne.evan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Why is EPA taking this action?**

On August 25, 2017, EPA received a letter from the Idaho Department of Water Resources (IDWR), formally requesting that EPA transfer and directly implement the Class II UIC program in Idaho, pursuant to 40 CFR 145.34(a). Class II injection wells inject fluids (1) that are brought to the surface in connection with natural gas storage, or oil or natural gas production; or (2) for the purpose of enhanced oil or natural gas recovery; or (3) for the storage of hydrocarbons, which are liquid at standard temperature and pressure. Idaho received primary implementation and enforcement authority (primacy) for Class I, II, III, IV, and V injection wells under the Safe Drinking Water Act, section 1422, on July 22, 1985. Idaho has since maintained primacy for these injection well classes in Idaho, including Class II.

Class II injection wells were banned in Idaho under the state's regulations in 1985, when EPA originally approved Idaho primacy, and as a result, this ban was codified in EPA's regulations. However, in 2013, the state passed legislation which allows these wells. Although the state's regulations now allow Class II wells, Idaho has not issued any Class II permits because EPA has not approved the change to Idaho's approved Class II UIC program and the wells remain banned under federal law; therefore, the state is not authorized to issue Class II permits. The voluntary

transfer of authority for the UIC Class II program to EPA would allow EPA to issue Class II permits in Idaho. EPA would be responsible for the direct implementation of the Class II underground injection program in Idaho, including permitting, compliance, and enforcement responsibilities, pursuant to the SDWA and federal UIC regulations.

This **Federal Register** document constitutes public notice of the transfer of Idaho's Class II program to EPA, as required by 40 CFR 145.34(a)(3). In this **Federal Register** document, EPA also proposes to make conforming changes to its regulations to reflect such transfer. 40 CFR part 147 sets forth the applicable UIC programs for each of the states. This rule would update 40 CFR part 147, subpart N, which currently lists Idaho as having primacy over Class II, to indicate that EPA will directly implement the Class II UIC program in Idaho. This transfer of authority will be effective upon publication of the final rule, revising such regulations, in the **Federal Register**. Because the transfer and rulemaking will allow wells to be permitted that were previously banned, EPA finds that there is "good cause" to make this rule, when final, effective upon publication in the **Federal Register**. 5 U.S.C. 553(d)(1) and (3).

**II. Legal Authorities**

A state with an approved primacy program may voluntarily transfer UIC program responsibilities to EPA, pursuant to 40 CFR 145.34(a). The regulations require that EPA provide notice of such transfer in the **Federal Register** at least 30 days before the transfer is to occur. 40 CFR 145.34(a)(3). The regulations do not provide for opportunity to comment on whether to transfer, and accordingly, EPA is not taking comment on such transfer.

EPA's regulations at 40 CFR part 147 set forth the applicable UIC programs for each of the states. This rule would make ministerial revisions to these regulations to reflect the transfer noticed herein. Specifically, the rule would revise 40 CFR part 147, subpart N, to indicate that the Class II UIC program for Idaho is to be directly implemented by EPA, and consists of the UIC program requirements of 40 CFR parts 124, 144, 146, and 148. EPA is taking comment only on these revisions.

**III. Statutory and Executive Order Reviews**

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (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)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042.

*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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to EPA. We have therefore concluded that this action will have no net regulatory burden for any directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This rule does not impose any mandates on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to EPA.

*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. This action contains no federal mandates for state and local governments and does not impose any enforceable duties on state and local governments. This action merely withdraws a state program (at the voluntary request from Idaho) and therein transfers implementation of the Class II UIC program to EPA.

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

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

*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*

This rulemaking does not involve technical standards.

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

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This rule does not impose any health or safety standards; this action transfers a state program and therein transfers direct implementation of the Class II UIC program to EPA.

**List of Subjects in 40 CFR Part 147**

Environmental protection, Indian—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: November 6, 2017.

**E. Scott Pruitt,**  
*Administrator.*

For the reasons set out in the preamble, Title 40 chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS**

- 1. The authority citation for part 147 is revised to read as follows:

**Authority:** 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

**Subpart N—Idaho**

- 2. Amend § 147.650 by revising the section heading and the introductory paragraph to read as follows:

**§ 147.650 State-administered program—Class I, III, IV, and V wells.**

The UIC program for Class I, III, IV, and V wells in the state of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by EPA pursuant to section 1422 of the Safe Drinking Water Act. Notice of this approval was published in the **Federal Register** on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to EPA in Idaho’s program application. Note: because EPA subsequently transferred the Class II UIC program from the Idaho Department of Water Resources to EPA, references to Class II in the following elements are no longer relevant or applicable for federal UIC purposes.

\* \* \* \* \*

- 3. Amend § 147.651 by revising the section heading and paragraphs (a) and (b) to read as follows:

**§ 147.651 EPA-administered program—Class II wells and all wells on Indian lands.**

(a) *Contents.* EPA administers the UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the state of Idaho. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in

Idaho is June 11, 1984. The effective date of the UIC program for Class II wells on non-Indian lands in Idaho is [date of publication of final rule in the **Federal Register**].

[FR Doc. 2017–24637 Filed 11–24–17; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 51 and 52**

[WC Docket No. 17–244, WC Docket No. 13–97; FCC 17–133]

**Nationwide Number Portability; Numbering Policies for Modern Communications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on how best to move toward complete nationwide number portability (NNP) to promote competition among all service providers. The NPRM proposes to eliminate the N–1 query requirement, and also proposes to forbear from the dialing parity requirements for competitive LECs that remain after the *2015 USTelecom Forbearance Order* as they apply to interexchange services. The NPRM asserts these changes will remove regulatory barriers to NNP and better reflect the competitive realities of today’s marketplace. The NOI seeks to refresh the record in the *2013 Future of Numbering NOI*. It also seeks comment on four NNP models proposed by ATIS: Nationwide implementation of local routing numbers (LRNs); non-Geographic LRNs (NGLRNs); commercial agreements; and iconectiv’s GR–2982–CORE. The NOI finally seeks comment on the implications of these proposals as they relate to public safety, access by individuals with disabilities, tariffs, and intercarrier compensation.

**DATES:** Comments are due on or before December 27, 2017, and reply comments are due on or before January 26, 2018. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 26, 2018.

**ADDRESSES:** You may submit comments, identified by both WC Docket No. 17–244, and WC Docket No. 13–97 by any of the following methods:

- *Federal Communications Commission’s Web site:* <http://>

[apps.fcc.gov/ecfs/](http://apps.fcc.gov/ecfs/). Follow the instructions for submitting comments.

- **Mail:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicole Ongele, Federal Communications Commission, via email to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Wireline Competition Bureau, Competition Policy Division, Sherwin Siy, at (202) 418-2783, or [sherwin.siy@fcc.gov](mailto:sherwin.siy@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Nicole Ongele at (202) 418-2991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 17-244, and CC Docket No. 13-97, adopted October 24, 2017, and released October 26, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at <https://www.fcc.gov/document/fcc-seeks-comment-moving-toward-nationwide-number-portability-0>. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), <http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf>.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format),

send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## Synopsis

### I. Introduction

1. Telephone numbers continue to serve as important identifiers for reaching family and friends, businesses, and other key contacts. Therefore, many individuals and businesses value their telephone numbers and the ability to keep them—whether changing service providers, moving from one neighborhood to another, or relocating across the country.

2. Currently, consumers and businesses can keep their telephone numbers when changing service providers—wireline-to-wireline, wireless-to-wireless, and wireline-to-wireless and the reverse—when they move *locally*. This *local* number portability (LNP) benefits consumers and promotes competition. But consumers cannot uniformly keep their traditional wireline numbers or their mobile numbers when they move long distance. The ability to keep your telephone number when switching your wireline or wireless service provider may depend on whether the service provider to whom you want to switch is a nationwide service provider. This limitation not only confuses and inconveniences consumers, it harms the ability of small or regional carriers to compete, undermining a core principle of number portability—competition.

3. In this Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI), the Commission seeks comment on how best to move toward complete nationwide number portability to promote competition between all service providers, regardless of size or type of service (wireline or wireless). We also explore how technical aspects of our current LNP and dialing parity rules hinder the efficient routing of calls throughout the network, causing inefficiencies and delays.

### II. Background

#### A. Overview

4. The Commission has plenary authority over numbering matters. Section 251(e) of the Act of 1934, as amended (the Act) gives the Commission exclusive jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues in the United States. Section 251(b)(2) of the Act requires local exchange carriers (LECs) to “provide, to the extent technically feasible, number portability in



accordance with requirements prescribed by the Commission.” Together, these portions of the Act give the Commission the authority not only to require “number portability,” which allows users to retain telephone numbers *at the same location*, but also to encourage “location portability,” allowing consumers to retain their telephone numbers when *changing their location*. Ensuring that telephone numbers do not act as barriers to competition between carriers of various sizes and technologies is well within our statutory authority. The Commission has created rules for local number portability and rules requiring that local number portability be available for wireless and interconnected Voice over Internet Protocol (VoIP) customers. A “rate center” is a geographic area that is used to determine whether a call is local or toll. This type of unlimited number portability—allowing consumers to port any telephone number anywhere—has been referred to as “nationwide number portability” (NNP) or “non-geographic number portability” (NGNP).

5. A wireless user may currently have more opportunities than a wireline user when it comes to number porting. But even among wireless competitors, smaller rural and regional carriers are at a disadvantage versus their nationwide competitors. Wireless-to-wireless porting is only possible if the ported-to wireless carrier has a facilities-based presence in the porting customer’s original geographic location, placing smaller, non-nationwide carriers at a disadvantage. Similarly, existing technical strictures prevent customers from porting their numbers from wireless-to-wireline services, should a consumer want to do so, unless the ported-to wireline service provider happens to have a presence in the same rate center as the customer’s number. This requirement naturally limits the ability of LECs to port-in numbers from wireless services, and will affect any toll or long-distance charges or other distance-sensitive costs for transiting the Public Switched Telephone Network (PSTN) portion of the call path, placing these local wireline carriers at a disadvantage when it comes to competing for consumers.

6. An interconnected Voice over Internet Protocol (VoIP) user is likewise limited in terms of portability. While there is no technologically-inherent restriction on location of use if connectivity is supported via the Internet (or via a dedicated network that can connect to it), calls to and from the PSTN are routed through the rate center where the telephone number is assigned

as a local number. This means that the rate center “location” of the number determines the location and thus the available LECs to which a customer can port the number. This reduced flexibility and choice also disadvantages LEC over providers of other telephony services.

7. Many consumers are thus still limited to *local* number portability, and interest in NNP remains high. Government and private stakeholders have explored possibilities for implementing NNP in various forums. In July 2015, the U.S. House of Representatives Committee on Energy and Commerce (the Committee) requested that the Commission expeditiously support nationwide number portability, noting that “[c]onsumers overwhelmingly prefer to keep their numbers when they switch carriers.” The Committee further indicated that the distinction within the number portability rules places non-nationwide providers at a competitive disadvantage and could result in consumer confusion when attempting to switch providers.

8. The Competitive Carriers Association (CCA) subsequently asserted that “CCA’s rural and regional members have experienced problems with porting-in wireless numbers from disparate parts of the country.” CCA further asserts that, as a result, non-nationwide carriers are placed at a competitive disadvantage compared to their nationwide counterparts who are able to port-in numbers regardless of location. CCA expressed that number portability “helps to expand competition by allowing consumers to choose carriers that offer lower prices and innovative product and service offerings, and these public interest benefits are diminished when non-nationwide carriers do not have the same capability as nationwide carriers.”

9. On May 16, 2016, the North American Numbering Council (NANC), issued a report on NNP. The NANC is the Commission’s Federal Advisory Committee on numbering administration matters. It is comprised of state regulators, consumer groups, industry representatives, and other stakeholders interested in number administration. The NANC Report recommended further inquiry into several issues, including potential impacts to the life of the NANP, necessary edits to federal rules, and the role of LRNs in the future as carriers use both time division multiplexing- and VoIP-based interconnection.

10. The Alliance for Technical Industry Solutions (ATIS) approved a Technical Report on a Nationwide

Number Portability Study on June 20, 2016. The Alliance for Telecommunication Industry Solutions (ATIS) is a technical planning and standards organization that develops and promotes technical and operations standards for communications and related information technologies worldwide. The ATIS Report analyzes five potential solutions for achieving NNP: (1) Nationwide implementation of LRNs; (2) non-Geographic LRNs (NGLRNs); (3) commercial agreements; (4) Internet interconnection; and (5) iconectiv’s GR-2982-CORE specification. ATIS reported that the commercial agreement solution is the only one that can be supported today that has no porting impacts.

11. On August 30, 2016, the NANC LNP Working Group issued a white paper on NGNP (the NANC notes that NGNP and NNP “are considered to be two synonymous terms, but it has become the preference of the NANC Working Groups to use the term NNP”). Among other things, the LNP Working Group concluded that regulatory changes made as a result of non-geographic number porting implementation should be technology and provider agnostic. The Working Group reiterated that “any implementation of NGNP . . . will require collaboration and support by all parties involved” and that an industry move towards NGNP will require a mandate by the Commission.

#### *B. Background on Number Portability Mechanisms*

12. In the last few years, ATIS and the NANC have worked to develop approaches for implementing NNP and thereby, increase access to smaller, regional carriers and increase routing efficiency in the network. Because the changes required by some of these proposals could be hindered by legacy aspects of our telephone regulations, we propose to eliminate certain legacy aspects of our telephone regulations to promote NNP, such as existing N-1 and dialing parity requirements. This section provides a summary of existing number portability mechanisms as background to the proposals and questions in the NPRM and the NOI below.

13. *Current LNP Process.* In the current local number portability system, consumers may keep their telephone number when changing providers if they remain at the same location. Stated differently, consumers may be prevented, for technical reasons, from retaining their telephone number when switching providers if they move outside the original geographic area of

their telephone number. This is true for both intramodal (e.g., wireline-to-wireline or wireless-to-wireless) and intermodal (e.g., wireline-to-wireless) ports. In either context, a customer who changes carriers, or who moves within the same general geographic area, can retain a telephone number through the use of a LRN: A 10-digit number-like number that shares a switch with the customer's location. The LRN is essentially a telephone number that designates the switch that serves the customer's new location. When someone calls that customer's ported number, one of the carriers routing the call will query the Number Portability Administration Center/Service Management System (NPAC/SMS), which provides the routing carrier the appropriate LRN. The NPAC/SMS consists of hardware and software platforms that host a national information database and serves as the central coordination point of LNP activity. In this NPRM/NOI, we refer to this system simply as the NPAC. The call is then routed to the appropriate switch, which contains the information necessary to route the call to the correct customer. The N-1 query requirement, described below, is built into this process; NNP solutions that alter the process would likely require altering or rescinding the N-1 requirement, lest it result in persistent routing inefficiencies. Dialing parity requirements are also implicated in the routing of calls to ported numbers, and their amendment may similarly facilitate NNP, by allowing greater choice on the part of local carriers to decide how calls are routed.

14. *N-1 Requirement.* The N-1 query requirement mandates that the carrier immediately preceding the terminating carrier (the N-1 carrier) be responsible for ensuring that the number portability database is queried. Paragraph 73 of the *Second Number Portability Order* is included in the NANC's recommendations for LNP architecture and administration, and thus incorporated by reference into our Rules. For instance, if a carrier is asked to originate a telephone call to a number that can be ported, it first determines whether or not the number requires routing to an interexchange carrier. If so, it routes the call to the interexchange carrier, which then queries the NPAC, sending it the digits of the dialed telephone number. The database answers the query by providing an LRN. The interexchange provider then routes the call to the terminating carrier's switch, which routes the call to the intended recipient. In this case, the

interexchange carrier is the N-1 carrier, and thus performs the number portability database query. If, on the other hand, the originating carrier finds that the dialed number does not require handoff to an interexchange carrier, it performs the query itself, receives the LRN, and then routes the call to the appropriate terminating carrier's switch. In that case, the originating carrier itself is the N-1 carrier, since only two carriers are involved.

15. The N-1 requirement requires the second-to-last carrier to perform the number portability database query; where an interexchange carrier is involved, this prevents the originating carrier from performing the query. The N-1 requirement was recommended by the NANC and adopted by the Commission in the early stages of implementing LNP because it ensured that: Carriers would know when a database had been queried; the cost of performing queries would be distributed between interexchange and originating providers; and, moreover, that routing performance would not be degraded by, for instance, having a call routed to a supposed terminating carrier, only for that carrier to perform a query and discover that the number had been ported and required further routing. Furthermore, industry stakeholders at the time preferred the N-1 query requirement to having the originating service provider perform the query, since doing so would require all carriers across the country to implement number portability simultaneously for it to work. However, given changing market conditions, and even more so with NNP, this system may need to be altered. As explained by ATIS, "[i]n an NNP environment, a call could look like it is interLATA but actually be intraLATA. In this case it could be more efficient for the originating carrier to know this, but they may not be able to do this with the N-1 requirement." Thus, changes to the number portability system can affect the ability for a given carrier to know whether or not it is in fact the N-1 carrier, and the requirement would actively introduce inefficiencies into the routing system, in some cases resulting in calls unnecessarily being rerouted multiple times, potentially increasing traffic and costs for carriers, and delays for consumers.

16. *Dialing Parity.* Dialing parity provisions were originally intended to ensure that incumbent LECs provided the same access to stand-alone long distance service providers as they did to their own or their affiliates' long distance offerings. This nondiscriminatory access to interexchange carriers is part of the set

of equal access requirements in the Act that have been adopted from the 1982 *Modification of Final Judgment* (MFJ) in the federal antitrust case against AT&T, which imposed these requirements on the Bell Operating Companies (BOCs). The Telecommunications Act of 1996 (1996 Act) incorporated the MFJ's equal access requirements for these former BOCs into the Communications Act via section 251(g). The 1996 Act also created more specific, affirmative equal access requirements in section 251(b) that applied to *all* local exchange carriers. The provisions in this section substantially resemble the requirements in the MFJ, with the key differences that the requirements in the MFJ cover information services as well as telephone toll service, and section 251(b)(3) covers local exchange and telephone toll service.

17. We seek, through this NPRM and NOI, to continue the Commission's efforts to align our regulations with the trend toward all-distance voice services. Moreover, we recognize, the decline of the stand-alone long distance market has limited the relevance and utility of certain equal access obligations for competitive providers and their customers. In the *2015 USTelecom Forbearance Order*, the Commission forbore from the "application to incumbent LECs of all remaining equal access and dialing parity requirements for interexchange services, including those under section 251(g) and section 251(b)(3) of the Act." However, the Commission adopted a "grandfathering" condition allowing incumbent LEC customers who were presubscribed to third-party long distance services as of the date of the *2015 USTelecom Forbearance Order* to retain certain equal access and dialing parity service. Thus, unless the grandfathering condition is applicable, toll dialing parity requirements, preserved by section 251(g), and the long distance (toll) dialing parity requirements of section 251(b)(3), no longer apply to incumbent LEC provision of interexchange access services.

18. Since the *2015 US Telecom Forbearance Order*, only limited toll dialing parity requirements remain. Competitive local exchange carriers (competitive LECs) must still abide by the long-distance dialing parity requirements of section 251(b)(3). The ATIS Report on NNP suggests that interLATA call processing requirements, such as the interexchange dialing parity requirements, may hinder certain proposals for NNP. Currently, an originating carrier determines whether or not to hand a call to an interexchange carrier based upon the dialed number.

However, if numbers can be ported on a nationwide basis, the number might actually be in the same LATA, meaning that transfer to an interexchange carrier of the customer's choosing would result in persistently inefficient routing, with potentially concomitant delays and costs. Eliminating the remaining dialing parity requirements may allow originating carriers to avoid these inefficiencies by increasing their choices. For instance, a carrier being asked by a customer to originate a call to a non-geographic telephone number might benefit from being able to handle the call as it prefers, instead of abiding by the constraints of the dialing parity requirements.

### III. Notice of Proposed Rulemaking

19. We believe that NNP will level the playing field for many rural and regional carriers, who are disadvantaged by the difficulty or outright inability of consumers to port in to their networks. Accordingly, we believe it is important to begin forging the way towards NNP. Because we understand that achieving this goal without incurring significant practical harms or prohibitive costs will require extensive work, collaboration, and support by all parties involved, we propose taking an incremental approach toward achieving NNP. As a first step to accommodate the architectures of NNP proposals and to reflect the evolving marketplace, we propose to remove the N-1 query requirement. Further, based on the ATIS Report and the marketplace findings in the *2015 USTelecom Forbearance Order*, we propose to eliminate remaining interexchange dialing parity requirements. Removing these regulations will thus help ensure an efficient network that provides consumers maximum flexibility in their communications choices and a competitive landscape for small and rural providers.

#### A. Proposed Elimination of the N-1 Query Requirement

20. We seek comment on whether the N-1 query requirement impedes plans for NNP such as the non-geographic LNP proposal. As the ATIS Report notes, in an NNP environment, an originating carrier could not determine, without performing a query, whether a dialed number required interexchange routing or not. This could lead to a number of inefficiencies, such as a scenario in which a number is ported from a distant location to the same LATA as an originating caller. In such a scenario, the originating carrier, believing the call to be long-distance, would route the call to an interexchange carrier, only for the interexchange

carrier, upon conducting the query, to have to route the ported number back to the originating carrier's LATA.

21. Furthermore, the motivating concerns that caused the NANC to recommend and the Commission to implement the N-1 requirement no longer seem to apply. When it was first adopted, the N-1 requirement was favored over requiring originating carriers to perform the database query because this latter solution would have required every local carrier across the country to adopt LNP simultaneously in a "flash-cut" manner for LNP to work, requiring more complicated coordination of the LNP rollout. Moreover, in an environment of many competing interexchange carriers and restrictions on incumbent LECs from offering interexchange services, interexchange carriers "wanted to ensure that they were involved in this important aspect of call processing." Since LNP has by now been broadly and successfully adopted nationwide, and in light of the changed competitive landscape, we anticipate that these concerns are no longer relevant.

22. We therefore propose to eliminate the N-1 query requirement, and we seek comment on this proposal. What are the benefits and drawbacks of removing the requirement? Is eliminating the requirement necessary to, or will it facilitate, the implementation of non-geographic location routing numbers or other NNP proposals, as suggested by ATIS? Would removing the requirement interfere with any aspects of the current routing or number portability querying system, or any other aspect of the network? For example, by proposing to allow carriers flexibility in conducting NPAC queries, will there be coordination issues among carriers or calls that are processed without a query? What costs, if any, would be saved if we eliminated the N-1 query requirement? Did the N-1 requirement lead to network routing inefficiencies and will its elimination correct those inefficiencies? Alternatively, will rescinding the requirement add to the costs of originating carriers, terminating carriers, or other parties, either in terms of performing more queries, or in terms of requiring equipment upgrades? Are there transaction or other costs or harms associated with transitioning away from N-1 query? In the absence of the requirement, would costs of the system be allocated appropriately? Would there be any other benefits of eliminating the N-1 query requirement not predicated on a move to NNP? Interested stakeholders should address these questions.

23. The ATIS Report states that eliminating the N-1 query requirement does not require supplanting it with a new requirement that originating carriers query the NPAC. According to the Report, "[a] carrier could choose to query all calls on their originating network and route calls to the NNP numbers accordingly, or they could choose to handle calls as they do today, *i.e.*, if a call looks like it is interLATA, hand it off to the IXC and let the IXC query the call." As the ATIS Report notes, it is important to ensure the call is queried before it gets to the network that is assigned the central office (CO) code, but not necessarily that the N-1 methodology be used. We seek comment on this perspective. Are there any benefits to the Commission requiring particular parties to perform the query, or are existing technical and market mechanisms (such as agreements and signaling between providers indicating query status) sufficient to ensure that queries will be performed efficiently and by the parties best placed to do so?

24. We also seek comment on whether anticipated changes in routing and queries might have other effects upon the public. For instance, how would these changes interact with public safety, including the provision of emergency services, such as 911 or Next Generation 911 calls? Will eliminating the N-1 query requirement lead to any changes in the handling of emergency calls, including their routing or the provision of necessary caller information?

#### B. Proposed Elimination of Remaining Interexchange Dialing Parity Requirements

25. In the *2015 USTelecom Forbearance Order*, the Commission forbore from the dialing parity provisions of sections 251(b)(3) and 251(g) only insofar as they applied to *incumbent* LECs in their provision of interexchange access services. In this section, we (1) propose to extend that forbearance to competitive LECs, (2) seek comment on extending forbearance to "grandfathered" customers who still maintain accounts with stand-alone long-distance providers, and (3) propose to eliminate the Commission's rules that mandate interexchange dialing parity and other requirements associated with it. We do not propose here to forbear from other requirements of section 251, such as requirements for interconnection; resale; number portability; access to rights of way; reciprocal compensation; or nondiscriminatory access to telephone numbers, operator services, directory assistance services, directory listings,

with no unreasonable dialing delays. We anticipate that these changes will remove barriers to NNP and better reflect the competitive realities of today's marketplace.

#### 1. Proposed Forbearance From Interexchange Dialing Parity Requirements

26. We propose to forbear from the dialing parity requirements of section 251(b)(3) as they apply to interexchange services. The *2015 USTelecom Forbearance Order* removed these constraints from incumbent LECs with regard to interexchange access services, and we propose to extend that same forbearance to competitive LECs. Section 10 of the Act states that the Commission shall forbear from applying any regulation or provision of the Act if it determines that: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. We seek comment on whether forbearing from the dialing parity requirements of section 251(b)(3) as they apply to interexchange services would meet the criteria of section 10.

27. We believe that the remaining interexchange dialing parity requirements for competitive LECs are no longer necessary in today's all-distance market to ensure that the charges and practices of competitive LECs are just and reasonable and are not unjustly or unreasonably discriminatory, and are no longer necessary for the protection of consumers. We further believe that the rationales behind the forbearance from the interexchange dialing parity requirements in the *2015 USTelecom Forbearance Order* apply similarly to both incumbent and competitive LECs. Do commenters agree? For instance, are commenters aware of substantial complaints stemming from our forbearance from the interexchange dialing parity requirements in the *2015 USTelecom Forbearance Order*? As described in the *2015 USTelecom Forbearance Order*, wireline customers today have more choices than they did in 1982 or 1996, including interconnected VoIP services. Similarly, stand-alone long-distance has not been

critical to competition for over a decade, with declining demand for it from both mass-market and business customers. Does the decrease in demand for stand-alone interexchange services reduce the likelihood that LECs will have unjust or unreasonable charges, practices, or classifications, and does it suggest that consumers no longer require protection from such practices? Does the increase in consumer choice obviate the need for these protections?

28. We also seek comment on the extent to which the interexchange dialing parity provisions affect any competitive LECs in practice. Do these provisions have substantial effects upon the costs, practices, and behavior of LECs currently? Are there any effects upon competitive LECs that significantly affect the market for local service as a whole? For example, given that competitive LECs serve a relatively small percentage of residential wireline voice accounts, do these provisions help a significant number of consumers or competitors?

29. Forbearance from the interexchange dialing parity requirements would also appear to be in the public interest. ATIS notes that an NNP regime, with all of the benefits to competition and consumers that come with it, would be facilitated by the elimination of interLATA call processing requirements. The ATIS Report notes that carriers' ability to efficiently route calls to non-geographic LRNs could be hindered by the need to refer calls that look like interexchange calls to a third-party carrier, when the call would more efficiently have been routed to a non-geographic transport provider or a non-geographic gateway. It is our understanding that forbearing from interexchange dialing parity would enable originating carriers to better choose how to route their calls, preventing inefficient network routing that might otherwise result from various NNP proposals. Do commenters agree? Can customers' pre-subscribed interexchange carrier choices accommodate the proposed changes without a loss of efficiency or undue cost? Are there other effects upon the public interest that might result from our proposed forbearance from the interexchange dialing parity requirements for competitive LECs? For instance, will there be any effects upon 911, Next Generation 911, or other aspects of emergency calling?

30. Furthermore, section 10(b) requires that the Commission account for the effects of forbearance on ensuring a competitive marketplace in making its public interest determination. Since the

implementation of the *2015 USTelecom Forbearance Order*, incumbent LECs have not had to comply with the interexchange dialing parity requirements of sections 251(b)(3) and 251(g). Will extending forbearance from those requirements to competitive LECs therefore ensure a level playing field between incumbent and competitive LECs? Will forbearance from these requirements help ensure a level and competitive playing field for small, rural, and regional carriers with respect to number portability? Will granting LECs more flexibility in choosing how calls are routed improve their competitive ability and offer consumers access to greater number portability? How else will the competitive landscape be affected by this proposed forbearance?

31. Given the decreased need for these mandates, combined with the likelihood that they will impede the implementation of NNP, we propose to use our forbearance authority to eliminate remaining interexchange dialing parity requirements, which apply to competitive LECs. We seek comment on this proposal. What costs, if any, do competitive LECs currently bear due to these requirements? Are other providers of local voice service, such as interconnected VoIP providers, affected by the application of these provisions, either to themselves or to competitors? Do other stakeholders benefit from relieving competitive LECs of these requirements, or are there other costs? Are there stakeholders whose position vis-à-vis competitive LECs today is significantly different from their position vis-à-vis incumbent LECs at the time of the *2015 USTelecom Forbearance Order*? Are there other aspects of section 251(b)(3), including nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, that are relevant to stakeholders today? We do not here propose to forbear from requirements for interconnection, resale, number portability, access to rights of way, or reciprocal compensation. Would any of these existing requirements be affected by our proposed forbearance? Would forbearance from any of these provisions assist in or hinder the implementation of NNP?

32. In the *2015 USTelecom Forbearance Order*, we forbore from the all remaining equal access requirements, including dialing parity, preserved in section 251(g), with the exception of the grandfathering condition. We do not believe the dialing parity requirements preserved in section 251(g) apply to competitive LECs. We seek comment on whether there are any dialing parity

requirements (applied via section 251(g)) from which we must forbear. If there are any remaining dialing parity requirements, we propose to forbear from those requirements and seek comment on such forbearance.

## 2. Seeking Comment on Extending Forbearance From Interexchange Dialing Parity Rules to Customers With Pre-Existing Stand-Alone Long-Distance Carriers

33. We also seek comment on the continuing need to preserve the choices of existing customers who are presubscribed to stand-alone long-distance services, whose choices were grandfathered in the *2015 USTelecom Forbearance Order*. Will LECs serving these customers be hindered from implementing NNP if these grandfathered customers continue to fall outside of the scope of forbearance? What costs would LECs or other carriers face in implementing NNP with or without the preservation of these choices? How many people still purchase long-distance calling from stand-alone long-distance carriers? Will these subscribers face any additional costs, burdens, or harms if we forbear from interexchange dialing parity rules? We seek estimates that quantify the cost of adjustment that such subscribers might face. Do interexchange carriers place material competitive pressure on LECs, and if so, what consumer benefit would be lost if we forbear as discussed herein? Are there additional benefits to retaining current grandfathered subscribers? In the *2015 USTelecom Forbearance Order*, we found that a significant number of retail customers still presubscribed to a stand-alone long-distance carrier, and that the public interest and protection of consumers required limiting the forbearance of equal access and dialing parity rules for these customers. We seek comment on whether or not extending this forbearance would meet the criteria of section 10.

34. We seek comment on whether the rationales for the grandfathering in the *2015 USTelecom Forbearance Order* still apply. Have conditions significantly changed since 2015? We seek comment on the present number of retail customers in the United States who presubscribe to stand-alone long-distance carriers. Would extending forbearance to these customers affect the costs they bear, considering the competition for all-distance packages? Are there any harms to customers affected by the *2015 USTelecom Forbearance Order* that suggest that we should retain the forbearance for grandfathered customers? Are the

number of such customers, and benefit they receive from use of stand-alone long-distance carriers, significant enough to justify maintaining this grandfathered status when weighed against the burdens and costs it imposes on LECs? Would eliminating the grandfathering and extending this forbearance to them meet the criteria of section 10?

## 3. Proposing Elimination of Toll Dialing Parity Rules

35. Because we propose to forbear from the long-distance dialing parity provisions of section 251(b)(3), for both incumbent and competitive LECs, we propose to eliminate the rules implementing those requirements. We believe that sections 51.209 (“Toll dialing parity”), 51.213 (“Toll dialing parity implementation plans”), and 51.215 (“Dialing parity; Cost recovery” for toll dialing parity), serve only to implement the provisions of section 251(b)(3) relating to toll dialing parity, and thus should be eliminated if our proposed forbearances are to be effective in facilitating the development of NNP. We also propose modifying section 51.205 (“Dialing parity: General”) to omit references to toll dialing parity. We seek comment on this proposal. Do these rule provisions serve any purpose or implement any other portions of the Act other than section 251(b)(3)? Are there any other rules whose only purpose is to implement toll dialing parity requirements? Are there any interests beyond those articulated in the Act’s dialing parity provisions that require these rules? How are these considerations affected by the retention or elimination of grandfathered customer relationships with presubscribed interexchange carriers? Will the elimination of these rules have any effect upon slamming? For example, can elimination of these rules reduce the mechanisms by which unscrupulous entities slam consumers? Conversely, are there useful consumer protections against slamming in these rules that are not effectively implemented elsewhere?

36. We seek comment on whether there are other rules that should be rescinded or modified to promote NNP. Should we consider forbearing from any other statutory provisions to allow the benefits of NNP to competition and consumers? We also seek comment on the interplay of the proposed forbearance and rule changes discussed in the NPRM with the technical solutions discussed below in the NOI. Specifically, to make NNP workable, should any forbearance and rule changes happen first, in advance of implementing any technical solutions,

or should the Commission defer until any technical solutions are in place?

## IV. Notice of Inquiry

37. While we believe it is important to move toward NNP, and invite comment above on steps that would lay the groundwork for doing so, we also seek input on how best to implement NNP, as well as its potential impacts on consumers and carriers. We therefore seek comment in this NOI on a variety of issues related to the deployment of NNP. We also note that while the focus of this NOI is to seek perspectives on the most feasible way to implement NNP, the goals of this proceeding could also be facilitated by larger changes to the current system of numbering administration. To that end, we also seek comment on how number administration might be improved to realize more efficient technical, operational, administrative, and legal processes.

### A. Scope of Inquiry

38. The ATIS Report and the NANC Report focus on NNP across wireline and wireless telecommunications services. Early efforts on this issue, however, focused merely on ensuring that wireless customers can retain their numbers when porting to other wireless carriers that lack a nationwide service area. We believe broader, intermodal NNP efforts will benefit consumers and competition, as well as potentially allow for useful reforms of the numbering system, and we explore means of achieving this goal below.

39. While our goal is to ensure broad, intermodal NNP, are there any benefits to a gradual implementation of NNP? Is such a partial deployment technically feasible? For instance, would it be possible for NNP to first be implemented for a particular subset of entities using numbering resources (such as wireless providers) before applying it to all entities? What advantages and disadvantages are there to a partial implementation of NNP?

### B. NNP Alternatives Identified in the ATIS Report

40. We seek comment on four of the specific models of NNP outlined by ATIS in its report: (1) Nationwide implementation of LRNs; (2) non-Geographic LRNs (NGLRNs); (3) commercial agreements; and (4) iconectiv’s GR-2982-CORE specification. Are any of the models preferable to others in terms of feasibility, cost, and adaptability to changing markets and technologies? Have ATIS and the NANC adequately considered the potential costs, benefits,

and barriers to implementation of each of these proposals? More generally, we seek evidence quantifying the benefit consumers would gain from being able to keep their number whenever they move outside a rate center and, alternatively, whether NNP would impose costs that outweigh those benefits as phone numbers increasingly become less informative about the dialed party's location. We also anticipate that NNP will have beneficial competitive effects, by allowing small, rural, and regional carriers to compete more effectively with larger, nationwide providers. We seek comment on this perspective. We also seek comment on other effects that these NNP proposals might have upon small carriers, including precisely what costs they might impose upon them, and how. We also seek comment on the impacts these various alternatives pose to routing calls to ported telephone numbers. To the extent that commenters believe that other NNP proposals, in addition to those outlined below, are promising solutions for NNP, we seek comment on those proposals and their potential implications.

41. *National LRN*. One conceptually simple way of implementing NNP would be to allow a ported number to be associated with any LRN. Instead of limiting the geographic area within which the number can be ported, the system could associate it with an LRN associated with any location in the country. Although this approach allows many existing systems and processes to be used, it also requires changes to NPAC rules, may complicate other routing and critical processes, and may require many carriers to upgrade or replace existing equipment. The NNGP subcommittee found that such an approach would require the NPAC to relax existing LRN changes to allow any LRN to be added to any NPAC region (there are eight NPAC regions—one in Canada and seven in the United States). In addition, it might require carriers to accept downloads from all NPAC regions, or keep port records in the region that is servicing the ported telephone number.

42. National LRN may require carriers' existing switches to handle more numbering plan areas, since a given switch may have to accommodate telephone numbers being ported in from a wider range of original areas. National LRN likely also requires changes to number portability rules. We have proposed eliminating the N-1 query requirement and remaining interexchange dialing parity requirements in the NPRM above. Are

additional changes necessary? We seek comment on these issues.

43. The national LRN proposal also implicates several non-routing issues. Industry processes, including the handling of call detail records, subscriber billing, and caller ID, will be impacted. We also anticipate that tariffs, toll free database processing, enhanced 911 processes, and other systems that rely upon the relationship between a telephone number and its rate center/LATA will likely be affected. What systems will be affected, and to what extent? We seek comment from providers, end users, and other stakeholders on what dependencies exist that would require changes, as well as how changes brought about by national LRN can improve existing systems.

44. The ATIS Report anticipates that a porting-in service provider may not have a presence in the ported-out area. While such situations currently exist and are generally handled by agreements between providers, many more such situations are likely to arise in a national LRN environment. What effects will this increase in demand have?

45. Local systems, including Local Service Management Systems (LSMS) and Service Order Administration (SOA), will also be affected by a national LRN system. Current systems may rely in part upon an assumed structure whereby numbers are only ported within LATAs or NPAC regions; an LRN can only be associated with a single NPAC region; or a ported telephone number record can only exist in one NPAC region. We seek comment on what dependencies exist based on these assumptions, and how they might be resolved.

46. What is necessary to ensure that a national LRN system is compatible with the variation in dialing plans across the country? Different customers have different requirements when dialing—some need only dial seven digits of a local number; others must dial ten digits, others must dial 1 and ten digits. Is nationwide consistency required for national LRN compatibility?

47. What effects will a national LRN system have on state regulators and systems? Porting numbers across state lines raises questions of existing state regulatory authority, and policy, including numbering resource management. For example, would NNP affect state regulatory commission processes for reviewing tariffs, handling customer complaints, and ensuring public safety? Provider responsibilities, obligations, and liabilities may also be

implicated with interstate porting. We seek comment on what issues may arise and how they may be resolved. Can existing systems and agreements in bordering states serve as models for interstate cooperation?

48. How will consumer experiences be affected by a national LRN system? Would calls to numbers ported outside of a specific rate center have completion issues? Consumers would also need to be informed about any effects upon rates and billing, if they subscribe to a geographically-based rate plan keyed to their rate center or LATA. How might this be done? Some consumers use software that blocks calls which incur tolls, based upon the number's NPA-NXX. How will such programs be affected, and how can they be adapted, if necessary, to accommodate a national LRN system? What effects will there be on caller ID?

49. Certain services are set up with restrictions on toll free calling based on the calling party's location. A customer who ports his number to a new location might therefore have problems calling the same toll-free number. We seek comment on the effects on toll free calling and potential implications of national LRN.

50. *Non-Geographic LRN (NGLRN)*. Another mechanism to allow NNP is to designate a new area code unaffiliated with any particular location. This non-geographic area code would be the area code for NGLRNs. Under an NGLRN system, ported numbers are associated with an NGLRN, instead of an LRN associated with the new location. When a service provider queries the NPAC and receives an NGLRN, the call is then routed to a non-geographic gateway (NGGW) that resides on an IP network and routes the call appropriately. This system can also support the creation of non-geographic telephone numbers. An NGLRN solution would support both wireline and wireless NNP. It also allows many existing processes to continue working, but as noted by ATIS and the NNGP subcommittee, it requires the creation and setup of the non-geographic area code, NGLRNs, NGGWs, and likely changes to certain regulations, including the N-1 query requirement.

51. The ATIS Report anticipates that aspects of interLATA call processing requirements, such as the dialing parity provisions, may interfere with an NGLRN system. Likewise, the ATIS Report suggests that the N-1 query requirement could create problems. Are these concerns adequately dealt with by our proposed forbearance from these rules as discussed above?

52. To route calls to non-geographic telephone numbers, carriers will need to access relevant routing information and route to NGGWs. Carriers that cannot route to NGGWs will need to route calls to a carrier that can, possibly requiring agreements with non-geographic transport providers. What policies are necessary to ensure continued and reliable call routing in an NGLRN system? What criteria should be required for NGGWs? The ATIS Report recommends that an industry-led body create a certification process. What bodies are best placed to conduct such certification, and what oversight should they have to ensure effectiveness, efficiency, transparency, and competition? We also seek comment on criteria for NGGWs, such as interconnection requirements. The ATIS Report recommends that carriers not be required to provide NGGW service or NNP service and that the only requirement be that carriers have the ability to route calls to NGLRNs. Furthermore, ATIS suggests that carriers that do choose to provide NGGW do so "for their own customers only." We seek comment on this recommendation. Relatedly, the NGLRN system is designed such that carriers are not required to implement NNP. What would be an appropriate timeline for NNP adoption, if any?

53. What characteristics should any non-geographic area code have? Should it be easily recognizable? Should various non-geographic area codes resemble each other for ease of recognition? How should the system address integration with other NANP countries? What impact would assignment and use of a non-geographic area code or codes within the NANP have on number exhaust in the United States and other NANP countries? We also seek comment on whether a single non-geographic area code will scale for the total set of NGLRNs. Will a single non-geographic area code be sufficient for the future?

54. The ATIS Report also raises several specific questions with regard to administration of non-geographic resources with an NGLRN system. The ATIS Report notes that certain current systems can be simplified with the adoption of non-geographic codes, such as combining the processes of number allocation and porting, or allowing distributed registries to handle processes currently managed by a single authoritative registry. We seek comment on the potential for such reforms, and their integration with existing systems and authorities.

55. With an NGLRN system, a call to 911 does not indicate its location by

virtue of the calling telephone number, but rather from databases such as the Master Service Address Guide (MSAG) or the emergency service number that has been assigned to the cell site. Will systems that depend on pseudo-Automatic Number Identification (p-ANI), in use for wireless and VoIP calls, be appropriate for other non-geographic calls?

56. *Commercial Agreements.* One proposed solution for wireless carriers uses a third party entity that would install points of interconnection in various LATAs, using its own network as a way to route interLATA calls to ported numbers. This proposal requires significant evaluation of LRN assignments in addition to the nature, categorization, and operation of the third party. The NGNP subcommittee found that the commercial agreement solution was the only one that could be supported without significant changes or impacts to NPAC or service provider systems.

57. In a commercial agreement solution, what entities would act as the third-party network, and what abilities and obligations would they need to have for effective and competitive operation? What would such a system require with respect to LRN assignments? Would such a proposal provide a pathway for wireline and intermodal NNP?

58. *GR-2982-CORE.* iconectiv's GR-2982-CORE specification details another NNP system called Portability Outside the Rate Center (PORC). PORC calls for dividing the country into small, non-overlapping geographic blocks called Geographic Unit Building Blocks (GUBBs). Each GUBB is represented by a telephone number-like identifier, and acts as the vehicle for the recipient switch to identify the geographic location of the end user receiving the call. A call to a ported telephone number will be routed using an LRN, as it is today, with the difference that the GUBB is used for carrier selection and rating purposes. This includes changes in how the caller is billed, and may include the need to alter porting data and NPAC policies and procedures. GR-2982-CORE also recognizes that participating carriers must have compatible switches, depending upon their role in the call flow. The NGNP subcommittee found that this proposal might require the NPAC to relax LRN changes, and may impact porting data if systems need to transmit additional routing data about the newly-created geographic building blocks of the system. The NGNP subcommittee also reports that changes to the porting records would impact all switches and number portability databases and many

service order administrations and local service management systems across the industry.

59. Do commenters agree with the NGNP subcommittee's assessments? Are there other issues or factors we should take into consideration in exploring the various approaches? How should the subcommittee's assessments affect any future action on these solutions?

60. The ATIS Report suggests that this solution may require the NPAC to relax existing LRN changes; that porting data may need to change to include GUBB information; and that these changes may impact all switches and number portability databases, as well as many SOAs and LSMS systems. What do these effects suggest for the viability of this solution currently? What is the likely timing for this option?

### *C. Necessary Changes and Challenges to Achieving NNP*

61. Apart from the implications raised by each specific proposal outlined by ATIS and the NANC, most, if not all, NNP proposals will have consequences for a variety of other aspects of the network. We seek comment on these implications in the specific areas below.

62. *Routing and Interconnection.* Are there NNP solutions that can improve the efficiency of existing routing systems? Conversely, are there NNP proposals that burden or render inefficient particular systems or industry databases? Can such systems and databases be modified, improved, or obviated with NNP solutions?

63. *Public Safety.* We seek comment on the effects that NNP might have upon public safety, including users' ability to use 911 in the knowledge that their calls will be routed appropriately, and that Public Safety Answering Points (PSAP) will receive accurate callback and location information. Can an NNP system provide this information? To the extent that existing systems lack the ability to provide this information in various NNP scenarios, are there modifications, adaptations, or workarounds that can supply it?

64. For instance, how can proposed NNP solutions work with legacy systems that rely upon ANI to report the location of users calling 911? Are enhanced or next generation 911 services affected by the proposals? The ATIS Report details several number portability issues affecting emergency calls, and we seek comment on their resolution.

65. The ATIS Report similarly notes potential effects of NNP proposals on the use of national security and emergency preparedness systems like Emergency Telecommunications Service

(ETS), including the Government Emergency Telecommunication Service (GETS) and the Priority Access Service (PAS), which provide priority calling for emergency telecommunications. What are the effects of the various proposals on the ability of ETS calls to be prioritized? Are there beneficial or deleterious effects on the network capacity, routing, or signaling of ETS?

66. *Access by Individuals with Disabilities.* We seek comment on how NNP implementations might affect access to communications services by individuals with disabilities. Can increased intermodal and geographic porting provide increased access to communications networks by individuals using assistive technologies? The Commission has permitted video relay service (VRS) and IP Relay users to register and obtain 10-digit geographic numbers, allowing users to be reached through a single number that will automatically connect to the registered user's primary VRS or IP Relay provider and allow the provider to determine the user's IP address for the purpose of delivering incoming calls made to that number.

The Commission also adopted requirements allowing VRS and IP Relay users to have both their 10-digit number and registered location information forwarded to the appropriate PSAP. We seek comment on how any NNP implementations might benefit these services, equivalent services, or any other services that serve individuals with hearing and speech disabilities. Can widespread NNP adoption promote technologies and systems that allow for more efficient or user-friendly ways to achieve these, or better, effects? What steps would be necessary to ensure that access to communications services for Americans with disabilities continues to be robust and secure in an NNP scenario, such as if numbers are assigned without regard to geography?

67. *Tariffs and Intercarrier Compensation.* We also seek comment on the various ways that NNP could affect carriers' pricing issues. How will proposed NNP implementations affect existing carrier tariffs? What are the ways in which various NNP proposals may alter the existing system of intercarrier compensation? Are there systems that can support or encourage a bill-and-keep system? What costs and benefits would such systems generate?

#### *D. Number Administration*

68. We also seek comment on how changes to our current methods of numbering plan, number pooling, and number portability administration might facilitate NNP, or how NNP might affect

these existing systems. If we significantly simplify the assignment and porting of numbers, would these changes require modifications to the current systems? Would it be possible, and beneficial, to allow multiple entities to provide competitive numbering administration services? Are there other systems of addressing what can serve as models for an evolving and increasingly IP-based network?

#### **V. Legal Authority**

69. As noted above, section 251(e)(1) of the Act gives the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States" and provides that numbers must be made "available on an equitable basis." The Commission retains "authority to set policy with respect to all facets of numbering administration in the United States." The Commission has promulgated local number portability rules to satisfy these congressional mandates, and the proposed actions in this NPRM are intended to further and better satisfy these mandates. We seek comment on this assessment.

70. Moreover, section 10 of the Act states that the Commission shall forbear from applying any regulation or provision of the Act if it determines that: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. We believe that our proposals discussed here satisfy these criteria as the remaining interexchange dialing parity requirements for competitive LECs are no longer necessary in today's all distance market to ensure that the charges and practices of competitive LECs are just and reasonable and are not unjustly or unreasonably discriminatory, and are no longer necessary for the protection of consumers. We seek comment on our forbearance analysis, as well as any other issues pertinent to our legal authority to facilitate NNP.

#### **VI. Initial Regulatory Flexibility Analysis**

71. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

72. In this NPRM, we propose changes to, and seek comment on, our rules on Local Number Portability Administration, and Nationwide Number Portability (NNP). In the NPRM, the Commission proposes to rescind the N-1 query requirement. Further, based on the ATIS Report and the marketplace findings in the 2015 *USTelecom Forbearance Order*, we propose to eliminate remaining interexchange dialing parity requirements. The objectives of the proposed modifications are to remove impediments to NNP.

##### *B. Legal Basis*

73. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), 10, 201(b), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201(b), and 251(e)(1).

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

74. 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.

75. *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.

76. *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.

77. *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 shows 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.

78. *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.

79. *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.

80. 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.

81. *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 indicates 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 IXC's are small entities that may be affected by our proposed rules.

82. *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.

83. *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.

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

85. *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.

86. *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.

87. 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.

88. *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.

89. *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.

90. *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.

91. *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.

92. *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. 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.

93. *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.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

94. This NPRM proposes changes to, and seeks comment on, Commission rules on Local Number Portability Administration, and Nationwide Number Portability (NRP). The NPRM seeks to amend our rules by removing the N-1 query requirement and proposes to forbear from remaining interexchange dialing parity requirements of section 251(b)(3). The objectives of the proposed modifications are to remove impediments to NRP. As the NPRM seeks comment on rule withdrawal and forbearance, we therefore do not adopt new reporting,

recordkeeping, or other compliance requirements.

95. As reported in the Final Regulatory Flexibility Analysis (1996 FRFA) of the 1996 order instituting the dialing parity rules, the compliance requirements of the Section 251 dialing parity rules include "dialing-parity specific software, hardware, signaling system upgrades and necessary consumer education." Such compliance entailed the "use of engineering, technical, operational, and accounting skills." We seek comment on whether withdrawing these proposed rules will enable LECs, including small entities, to reduce or eliminate these costs via a lesser compliance burden.

#### *E. 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 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. The 1996 FRFA states that the dialing parity provisions allowed "LECs and competing providers of telephone toll service" including small entities "to not be subject to an array of differing state standards and timetables requiring them to research and tailor their operations to the unique requirements of each state." We seek comment as to the extent all LECs, including small entities, will be economically impacted by the removal of nationwide provisions.

98. The 1996 FRFA also explains that as result of the dialing parity rules, a carrier could not automatically designate itself as a "toll carrier without notifying the customer of the opportunity to choose an alternative carrier, one or more of which may be a small business." We seek comment as to any additional economic burden incurred by small entities as a result of the withdrawal of the dialing parity rule.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

99. None.

**VII. Procedural Matters**

*A. Deadlines and Filing Procedures*

100. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document in Dockets WC 17-244, and WC 13-97. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

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

101. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*B. Initial Regulatory Flexibility Analysis*

102. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice of Proposed Rulemaking. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference

Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

*C. Paperwork Reduction Act*

103. This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites 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, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*D. Contact Persons*

104. For further information about this proceeding, please contact Sherwin Siy, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C225, 445 12th Street SW., Washington, DC 20554, (202) 418-2783, [Sherwin.Siy@fcc.gov](mailto:Sherwin.Siy@fcc.gov).

**VIII. Ordering Clauses**

105. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 10, 201(b), and 251(e) of the Communication Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201(b), and 251(e) that this Notice of Proposed Rulemaking and Notice of Inquiry *is adopted*.

106. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 51*

Interconnection.

*47 CFR Part 52*

Numbering.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

**Proposed Rules**

For the reasons set forth above, The Federal Communications Commission proposes to amend parts 51 and 52 of Title 47 of the Code of Federal Regulations as follows:

**PART 51—INTERCONNECTION**

- 1. The authority citation for part 51 continues to read as follows:

**Authority:** 47 U.S.C. 151–55, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302.

**Subpart C—Obligations of All Local Exchange Carriers**

- 2. Amend § 51.205 by revising it to read as follows:

**§ 51.205 Dialing parity: General.**

A local exchange carrier (LEC) shall provide local dialing parity to competing providers of telephone exchange service, with no unreasonable dialing delays. Dialing parity shall be provided for originating telecommunications services that require dialing to route a call.

- 3. Remove § 51.209.

**§ 51.209 [Removed]**

Remove § 51.209.

- 4. Remove § 51.213

**§ 51.213 [Removed]**

Remove § 51.213.

- 5. Remove § 51.215.

**§ 51.215 [Removed]**

Remove § 51.215.

**PART 52—NUMBERING**

- 6. The authority citation for part 52 continues to read as follows:

**Authority:** Secs. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154 and 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

**Subpart C—Number Portability**

- 7. In § 52.26 revise paragraph (a) to read as follows:

**§ 52.26 NANC Recommendations on Local Number Portability Administration.**

(a) Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. *Except that:* Sections 7.8 and 7.10 of *Appendix D* and the following portions of *Appendix E*: Section 7, Issue Statement I of Appendix A, and Appendix B in the *Working Group Report* are *not* incorporated herein.

\* \* \* \* \*

[FR Doc. 2017–25458 Filed 11–24–17; 8:45 am]

**BILLING CODE 6712–01–P**

# Notices

Federal Register

Vol. 82, No. 226

Monday, November 27, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 21, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 27, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control

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

### Foreign Agricultural Service

*Title:* Pima Agriculture Cotton Trust Fund.

*OMB Control Number:* 0551-0044.

*Summary of Collection:* Section 12314 of the Agricultural Act of 2014 (Pub. L. 113-79) authorizes distribution out of the Pima Agriculture Cotton Trust Fund in each of calendar years 2014 through 2018, payable to qualifying claimants. Eligible claimants are directed to submit a notarized affidavit, following the statutory procedures specified Section 12314(c) or (d) of the Act.

*Need and Use of the Information:* Distributions out of the Trust Fund is payable to (1) One or more nationally recognized associations established for the promotion of pima cotton for use in textile and apparel goods; (2) yarn spinners of pima cotton that produce ring spun cotton yarns in the United States; and (3) manufacturers who cut and sew cotton shirts in the United States who certify that they used imported cotton fabric during calendar year 2013. Eligible claimants for a distribution from the Pima Cotton Trust Fund are directed to submit a notarized affidavit. The Foreign Agriculture Service (FAS) will use the information provided in the affidavits to certify the claimants' eligibility and to authorize payment from the Pima Cotton Trust Fund. If eligible claimants do not submit an affidavit with the required information they will not be entitled to a distribution from the Pima Cotton Trust Fund.

*Description of Respondents:* Business or other-for-profit.

*Number of Respondents:* 7.

*Frequency of Responses:* Recordkeeping, Reporting: Annually.

*Total Burden Hours:* 14.

### Ruth Brown,

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2017-25575 Filed 11-24-17; 8:45 am]

**BILLING CODE 3410-10-P**

## DEPARTMENT OF AGRICULTURE

### Departmental Management; Performance Review Board Membership; Notice Appointments

**AGENCY:** Office of Human Resource Management, Departmental Management, USDA.

**ACTION:** Notice of Performance Review Board appointments.

**SUMMARY:** This notice announces the members of the Senior Executive Service (SES) and Senior Level (SL) and Scientific or Professional (ST) Performance Review Board. Agriculture has one PRB that is represented by each Mission Area. The PRB is comprised of a Chairperson and a mix of career and noncareer senior executives that meets annually to review and evaluate performance appraisal documents and provides a written recommendation to the Secretary for final approval of each executive's performance rating, performance-based pay adjustment, and performance award.

**DATES:** The board membership is applicable beginning on October 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** Marsha A. Wiggins, Acting Director, Office of Human Resources Management, telephone: (202) 720-3585, or Terri Meighan, Acting Director, Executive Resources Management Division, telephone: (202) 720-2655.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the USDA PRB members are named below:

### Office of the Secretary

Adcock, Rebeckah F. and Lyons, Margaret P.

### Assistant Secretary for Administration

Salguero, Francisco; William, Duane

### Assistant Secretary for Civil Rights

Lake Scott, Winona M.

### Food, Nutrition and Consumer Services

Lipps, Brandon R.

### Farm Production and Conservation

Christensen, Thomas W.

### Food Safety

Rottenberg, Carmen M.

### Marketing and Regulatory Programs

Morris, Erin and Shea, A. Kevin

**Natural Resources and Environment**

Jiron, Daniel J.; Millar, Constance I.; and Velasco, Robert

**Office of Budget and Program Analysis**

Bice, Donald

**Office of the Chief Economist**

Hohenstein, William G.

**Office of the Chief Financial Officer**

Moaney, Lynn M.

**Office of the General Counsel**

Leland, Arlean and Ricci, Carrie F.

**Rural Development**

McLean, Christopher and Primrose, Edna

**Research Education and Economics**

Bretting, Peter K.; Hamer Jr., Hubert; Jacobs-Young, Chavonda J.; Liu, Simon Y.; and Mattoo, Autar K.

**Trade and Foreign Agricultural Affairs**

Hafemeister, Jason T.

Dated: November 17, 2017.

**Marsha A. Wiggins,**

*Acting Chief Human Capital Officer.*

[FR Doc. 2017-25525 Filed 11-24-17; 8:45 am]

BILLING CODE P

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****Announcement of Grant Application Deadlines and Funding Levels for the Assistance to High Energy Cost Rural Communities Grant Program**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Solicitation of Applications (NOSA); correction.

**SUMMARY:** The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA) published a document in the **Federal Register** on October 12, 2017 announcing the availability of up to \$10 million in fiscal year 2017 (FY17) and application deadlines for competitive grants to assist communities with extremely high energy costs. The priority points to be awarded for projects serving communities identified as high poverty communities is 10 points. This notice is to correct inconsistencies on this matter in the NOSA that was published on October 12th.

**FOR FURTHER INFORMATION CONTACT:** Robin Meigel, USDA—Rural Utilities Service, 1400 Independence Avenue SW., Stop 1568, Washington, DC 20250–

1568, telephone (202) 720–9452 or email to [robin.meigel@wdc.usda.gov](mailto:robin.meigel@wdc.usda.gov).

**Correction**

In the **Federal Register** of October 12, 2017, in FR Doc. 2017–22042, on page 47462, in the first column, the heading “a. High Poverty Areas (15 Points)” should read “a. High Poverty Areas (10 Points).”

Also, in the same FR Doc. 2017–22042, on page 47462, in the first column, under the heading “a. High Poverty Areas” in the first paragraph, the third sentence should begin as follows: “In support of this USDA initiative, RUS will award 10 priority points for projects that serve communities in counties that are classified as High Poverty or Persistent Poverty by the USDA Economic Research Service . . .”

Dated: November 20, 2017.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2017–25527 Filed 11–24–17; 8:45 am]

BILLING CODE P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A–570–601]

**Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review; 2016–2017**

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

**SUMMARY:** On August 1, 2017, the Department of Commerce (Department) initiated an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs) from the People’s Republic of China (PRC) for 24 companies. Based on timely withdrawal of requests for review, we are now rescinding this administrative review with respect to four of these companies, Changshan Peer Bearing Co., Ltd. (CPZ/SKF), Hubei New Torch Science & Technology Co Ltd (New Torch), Shanghai General Bearing Co., Ltd (SGBC), and Wanxiang Group Corp (Wanxiang).

**DATES:** Applicable November 27, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Medley or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–6274, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

In June 2017, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on TRBs from the PRC. Based upon these requests, on August 1, 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published a notice of initiation of an administrative review covering the period June 1, 2016, through May 31, 2017, with respect to 24 companies.<sup>1</sup> On September 13, 2017, CPZ/SKF and SGBC withdrew their requests for an administrative review. On September 13, 2017, and October 30, 2017, The Timken Company (the petitioner) withdrew its requests for an administrative review on SGBC, Wanxiang, and New Torch.

**Partial Rescission**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. CPZ/SKF and SGBC timely withdrew their requests for an administrative review of themselves. The petitioner timely withdrew its requests for review concerning SGBC, Wanxiang, and New Torch. No other party requested a review of these four companies. Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

**Assessment**

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 35749 (August 1, 2017). See also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974, 42981 (September 13, 2017).

instructions to CBP 15 days after publication of this notice.

#### Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled 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 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 which is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 16, 2017.

#### James Maeder,

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

[FR Doc. 2017-25535 Filed 11-24-17; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979, C-570-980]

#### Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part

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

**SUMMARY:** Based on a request from Pitsco, Inc. d/b/a Pitsco Education (Pitsco), the Department of Commerce (the Department) is initiating changed

circumstances reviews to consider the possible revocation, in part, of the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (PRC) with respect to certain solar panels, as described below.

**DATES:** Applicable November 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Lauren Caserta or Kaitlin Wojnar, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4737 and (202) 482-3857, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 7, 2012, the Department published AD and CVD orders on certain crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.<sup>1</sup>

On October 6, 2017, Pitsco, an importer of the subject merchandise, requested through a changed circumstances review revocation, in part, of the *Orders* pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b),<sup>2</sup> with respect to certain solar panels. On October 13, 2017, SolarWorld Americas, Inc. (the petitioner) submitted a letter stating that it does not oppose the scope exclusion language proposed by Pitsco.<sup>3</sup> From October 25, 2017, through November 8, 2017,<sup>4</sup> the Department consulted with both Pitsco and SolarWorld regarding revisions to the proposed exclusion language; specifically, the Department suggested limiting the language to a description of the physical characteristics of the product and also expressed concerns regarding the dimensions indicated in the description.<sup>5</sup>

<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (collectively, *Orders*).

<sup>2</sup> See Pitsco's Letter, "Request for Changed Circumstances Review (A-570-980; C-570-979)," dated October 6, 2017.

<sup>3</sup> See SolarWorld's Letter, "Pitsco, Inc.'s Scope Exclusion Language—Letter of No Opposition," dated October 13, 2017.

<sup>4</sup> See Memorandum, "Ex Parte Communications with Adduci, Mastriani and Wiley Rein," dated November 13, 2017.

<sup>5</sup> *Id.*

Accordingly, on November 10, 2017, Pitsco submitted the following revised exclusion language:<sup>6</sup>

Excluded from the scope of these orders are panels with surface area from 3,450 mm<sup>2</sup> to 33,782 mm<sup>2</sup> with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. No panel shall contain an internal battery or external computer peripheral ports.

On November 13, 2017, SolarWorld submitted a letter stating that it does not oppose the revised exclusion language submitted by Pitsco on November 10, 2017.<sup>7</sup>

#### Scope of the Antidumping and Countervailing Duty Orders on Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China

The merchandise covered by the orders is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

The orders cover crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the orders.

Excluded from the scope of the orders are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

<sup>6</sup> See Pitsco's Letter, "Amended Changed Circumstances Review (A-570-980; C-570-979)," dated November 10, 2017.

<sup>7</sup> See SolarWorld's Letter, "Pitsco, Inc.'s Scope Exclusion Language—Letter of No Opposition," dated November 13, 2017.



Also excluded from the scope of the orders are crystalline silicon photovoltaic cells, not exceeding 10,000 mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by the orders; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by the orders.

Merchandise covered by these orders is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the orders is dispositive.

#### Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Orders in Part

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party<sup>8</sup> that shows changed circumstances sufficient to warrant a review of an order.<sup>9</sup> Based on the information provided by Pitsco, the Department has determined that there exist changed circumstances sufficient to warrant changed circumstances reviews of the AD and CVD orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC. We find that the petitioner's affirmative statement of no interest in the *Orders* with respect to the exclusionary text proposed by Pitsco, as revised by the Department and described above, constitutes good cause for the conduct of these reviews.

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of

interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results. In its administrative practice, the Department has interpreted "substantially all" to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.<sup>10</sup>

The petitioner states that it agrees with the exclusion request; however, because the petitioner did not indicate whether it accounts for substantially all of the domestic production of crystalline silicon photovoltaic cells, we are providing interested parties with the opportunity to address the issue of domestic industry support with respect to this requested partial revocation of the orders, as explained below. After examining comments, if any, concerning domestic industry support, the Department will issue the preliminary results of these changed circumstances reviews.

#### Public Comment

Interested parties are invited to provide comments and/or factual information regarding these changed circumstances reviews, including comments concerning industry support. Comments and factual information may be submitted to the Department no later than ten days after the date of publication of this notice. Rebuttal comments and rebuttal factual information may be filed with the Department no later than seven days after the comments and/or factual information are filed.<sup>11</sup> All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS).<sup>12</sup> An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time on the due dates set forth in this notice.

The Department will issue preliminary results of these changed circumstances reviews, which will set forth the factual and legal conclusions upon which the preliminary results are

based, and, in accordance with 19 CFR 351.221(c)(3)(i), will include a description of any action proposed because of those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of these reviews. In accordance with 19 CFR 351.216(e), the Department intends to issue the final results of these AD and CVD changed circumstance reviews within 270 days after the date on which the reviews are initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review. This initiation is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: November 20, 2017.

**James Maeder,**

*Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2017-25538 Filed 11-24-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

**DATES:** Applicable November 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482-3692.

**SUPPLEMENTARY INFORMATION:** Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods April 1, 2017, through June 30, 2017.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act,

<sup>8</sup> Pitsco stated in its October 6, 2017 CCR request that it is an importer of subject merchandise and as such is an interested party pursuant to 19 CFR 351.102(b)(29).

<sup>9</sup> See 19 CFR 351.216.

<sup>10</sup> See, e.g., *Certain Cased Pencils from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke Order in Part*, 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order, in Part*, 77 FR 53176 (August 31, 2012).

<sup>11</sup> Submission of rebuttal factual information must comply with 19 CFR 351.301(b)(2).

<sup>12</sup> See, generally, 19 CFR 351.303.

being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information

on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Ave. NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: November 20, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY**

Country	Program(s)	Gross <sup>1</sup> subsidy (\$/lb)	Net <sup>2</sup> subsidy (\$/lb)
28 European Union Member States <sup>3</sup>	European Union Restitution Payments	\$0.00	\$0.00
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Norway	Indirect (Milk) Subsidy Consumer Subsidy	0.00	0.00
	<b>Total</b>	<b>0.00</b>	<b>0.00</b>
Switzerland	Deficiency Payments	0.00	0.00

<sup>1</sup> Defined in 19 U.S.C. 1677(5).

<sup>2</sup> Defined in 19 U.S.C. 1677(6).

<sup>3</sup> The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2017-25551 Filed 11-24-17; 8:45 am]  
BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-062]

**Cast Iron Soil Pipe Fittings From People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation**

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

**DATES:** Applicable November 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sergio Balbontin at (202) 482-6478 or Michael Bowen at (202) 482-0768, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 2, 2017, the Department of Commerce (the Department) initiated a less-than-fair-value (LTFV) investigation of imports of cast iron soil pipe fittings (soil pipe fittings) from the People's

Republic of China (PRC).<sup>1</sup> Currently, the preliminary determination is due no later than December 20, 2017.

**Postponement of Preliminary Determination**

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a LTFV investigation within 140 days after the date on which the Department initiated the investigation. However, section 733(c)(1) of the Act permits the Department to postpone the preliminary determination until no later than 190 days after the date on which the Department initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) the Department concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. The Department will grant the request unless

it finds compelling reasons to deny the request.

On November 14, 2017, the Cast Iron Soil Pipe Institute<sup>2</sup> (the petitioner) submitted a timely request that the Department postpone the preliminary determination in this LTFV investigation.<sup>3</sup> The petitioner stated that it requests postponement because it believes that “the Department needs more time to analyze the information submitted to date.”<sup>4</sup>

For the reason stated above, and because there are no compelling reasons to deny the request, the Department, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, the Department will issue its preliminary determination no later than February 8, 2018. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

<sup>2</sup> The members of the Cast Iron Soil Pipe Institute are AB&I Foundry, Charlotte Pipe & Foundry, and Tyler Pipe.

<sup>3</sup> See Letter from the petitioner, “Cast Iron Soil Pipe Fittings from the People's Republic of China: Request to Extend the Preliminary Determination,” dated November 14, 2017.

<sup>4</sup> *Id.*

<sup>1</sup> See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Initiation of Less-Than-Fair Value Investigation*, 82 FR 37053 (August 8, 2017) (*Initiation Notice*).

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 20, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017-25536 Filed 11-24-17; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-972; A-583-848]

#### Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Continuation of Antidumping Duty Orders

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

**DATES:** Applicable November 27, 2017.

**SUMMARY:** As a result of the determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty orders on certain stilbenic optical brightening agents (stilbenic OBAs) from the People's Republic of China (PRC) and Taiwan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders.

**FOR FURTHER INFORMATION CONTACT:** Eli Lovely, 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) 482-1593.

**SUPPLEMENTARY INFORMATION:** On April 3, 2017, the Department published the notice of initiation of the first sunset reviews of the antidumping duty orders on stilbenic OBAs from the PRC and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup>

As a result of its review, the Department determined that revocation of the antidumping duty orders on certain stilbenic OBAs from the PRC and Taiwan would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins of dumping

likely to prevail should the orders be revoked.<sup>2</sup>

On October 27, 2017, the ITC published its determination, pursuant to section 751(c)(1) of the Act, that revocation of the antidumping duty orders on certain stilbenic OBAs from the PRC and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup>

#### Scope of the Orders

The stilbenic OBAs covered by the orders are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1,3,5-triazin-2-yl]<sup>4</sup> amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by the orders include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from the orders are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]<sup>5</sup> amino-2,2'-stilbenedisulfonic acid, C<sub>40</sub>H<sub>40</sub>N<sub>12</sub>O<sub>8</sub>S<sub>2</sub> (Fluorescent Brightener 71). The orders cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Continuation of the Orders

As a result of these determinations by the Department and the ITC that

<sup>2</sup> See *Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 82 FR 36732 (August 7, 2017).

<sup>3</sup> See *USITC Publication 4737* (October 2017), entitled *Certain Stilbenic Optical Brightening Agents from China and Taiwan: Investigation Nos. 731-TA-1186-1187* (Review).

<sup>4</sup> The brackets in this sentence are part of the chemical formula.

<sup>5</sup> *Id.*

revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping orders on certain stilbenic OBAs from the PRC and Taiwan. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 20, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017-25537 Filed 11-24-17; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XF582

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bravo Wharf Recapitalization Project, Year 2

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request from Naval Facilities Engineering Command Southeast and Naval Facilities Engineering Command Atlantic (the Navy) for authorization to take marine mammals incidental to Bravo Wharf Recapitalization, Year 2 in Naval Station Mayport (NSM), Jacksonville, Florida. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental

<sup>1</sup> See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 16159 (April 3, 2017).

harassment authorization (IHA) to incidentally take marine mammals during the specified activities. 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 December 27, 2017.

**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.elliott@noaa.gov](mailto:ITP.elliott@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 [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm) 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:** Brianna Elliott, 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 [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). In case of problems accessing these documents, please call the contact listed above.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is

limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

##### **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 CE B4 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 July 12, 2017, NMFS received a request from the Navy for an IHA to take marine mammals incidental to pile driving in association with the Bravo Wharf recapitalization project at NSM, FL. The Navy’s request is for take of bottlenose dolphins (*Tursiops truncatus truncatus*) by Level B harassment only. Neither the Navy nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to the Navy for similar work at Bravo Wharf (81 FR 52637, 1 December 2016; revised IHA for this activity: 82 FR 11344, 13 March 2017) and Wharf C-2, also located within NSM (80 FR 55598, 8 September 2015; 78 FR 71566, 1 December 2013 and revised IHA for this activity: 79 FR 27863, 1 September 2014). The Navy complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of previous IHAs at Wharf C-2 (80 FR 55598, 8 September 2015; 79 FR 27863, 1 September 2014) and information regarding their monitoring results may be found at <http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm>.

This proposed IHA would cover one year of a larger project for which the Navy obtained a prior IHA at Bravo Wharf. The larger project involves recapitalization of Bravo Wharf at three berths in NSM spread across Phase I and Phase II, which involves installing 880 single sheet piles through the two phases. The majority of construction activity is occurring in the first year of the project, with Phase I estimated to be fully complete and Phase II estimated to be 60 percent complete by March 13, 2018, the proposed start date for this proposed IHA; therefore, this IHA is for the remaining work at Bravo Wharf.

##### **Description of Proposed Activity**

###### *Overview*

Bravo Wharf is a medium draft, general purpose berthing wharf that was constructed in 1970 and lies at the western edge of the NSM turning basin. Bravo Wharf is approximately 2,000 feet (ft) long, 125 ft wide, and has a berthing depth of 50 ft mean lower low water. The wharf is one of two primary deep draft berths at the basin and is capable of berthing ships up to and including large amphibious ships; it is one of three primary ordnance handling berths at the basin. The wharf is a diaphragm steel sheet pile cell structure with a concrete apron, partial concrete encasement of the piling, and asphalt paved deck. The

wharf is currently in poor condition due to advanced deterioration of the steel sheeting and lack of corrosion protection. This structural deterioration has resulted in the institution of load restrictions within 60 ft of the wharf face. The purpose of the second year of this project is to finish installing remaining sheet piles by vibratory pile driving, though contingency impact driving may be necessary, in order to complete necessary repairs to Bravo Wharf. Please refer to the Navy's application for a schematic of the project plan.

Both vibratory and impact pile driving could result in take, by Level B harassment only, of bottlenose dolphins through exposure to the sound source in waters surrounding NSM. Activity will be confined to forty days, including 30 days for vibratory pile driving and 10 contingency days for impact pile driving.

#### *Dates and Duration*

The total project, including the first year of construction for which an IHA was issued (82 FR 11344; 22 February 2017) is expected to require a maximum of 130 days of in-water pile driving. The second year of the project, reflected in this proposed IHA, will involve a maximum of 40 days of in-water construction. Vibratory pile driving is expected to take 30 days, with a contingent 10 days of impact pile driving. Operators would only conduct pile driving during daylight hours as determined by NOAA data, and no in-water construction activities could occur between 10 p.m. to 6 a.m. at any point during the year. The specified activities are expected to occur between March 13, 2018 and March 12, 2019.

#### *Specific Geographic Region*

NSM is located in northeastern Florida, at the mouth of the St. Johns River and adjacent to the Atlantic Ocean (see Figures 1–1, 2–1, and 2–2 of the Navy's application). The St. Johns River is the longest river in Florida, with the final 35 miles (mi) flowing through the city of Jacksonville. This portion of the river is significant for commercial shipping and military use. At the mouth of the river, near the action area, the Atlantic Ocean is the dominant influence and typical salinities are above 30 parts per million. Outside the river mouth, in nearshore waters, moderate oceanic currents tend to flow southward parallel to the coast. Sea surface temperatures range from around 16 °C in winter to 28 °C in summer.

The specific action area consists of the NSM turning basin, an area of approximately 2,000 by 3,000 ft

containing ship-berthing facilities at sixteen locations along wharves around the basin perimeter. The basin was constructed during the early 1940s by dredging the eastern part of Ribault Bay (at the mouth of the St. Johns River), with dredge material from the basin used to fill parts of the bay and other low-lying areas in order to elevate the land surface. The basin is currently maintained through regular dredging at a depth of 50 ft, with depths at the berths ranging from 30–50 ft. The turning basin, connected to the St. Johns River by a 500-ft-wide entrance channel, will largely contain sound produced by project activities, with the exception of sound propagating east into nearshore Atlantic waters through the entrance channel (see Figure 2–2 of the Navy's application). Bravo Wharf is located in the western corner of the Mayport turning basin.

#### *Detailed Description of Specific Activity*

In order to rehabilitate Bravo Wharf, the Navy proposes to install a new steel sheet pile bulkhead at Bravo Wharf. The entire recapitalization project consists of installing a total of approximately 880 single sheet piles. By March 2018, it is estimated that Phase I will be 100 percent complete and Phase II will be 60 percent complete, with 234 piles remaining to be installed. The wall will be anchored at the top and fill consisting of clean gravel and concrete fill will be placed behind the wall. A concrete cap will be formed along the top and outside face of the wall to tie the entire structure together and provide a berthing surface for vessels. The new bulkhead will be designed for a 50-year service life.

All piles would be driven by vibratory hammer, although impact pile driving may be used as a contingency in cases when vibratory driving is not sufficient to reach the necessary depth. In the unlikely event that impact driving is required, either impact or vibratory driving could occur on a given day, but concurrent use of vibratory and impact drivers would not occur. The Navy estimates that a total of 40 in-water work days may be required to complete pile driving activity, which includes 10 days for contingency impact driving, if necessary.

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**

There are four marine mammal species which may inhabit or transit

through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin (*Tursiops truncatus truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple additional cetacean species occur in south Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area.

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 (SAR; [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/)) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's Web site ([www.nmfs.noaa.gov/pr/species/mammals/](http://www.nmfs.noaa.gov/pr/species/mammals/)). Please also refer to the Navy's Marine Resource Assessment for the Charleston/Jacksonville Operating Area, which documents and describes the marine resources that occur in Navy operating areas of the Southeast (DoN 2008). The document is publicly available at [www.navfac.navy.mil/products\\_and\\_services/ev/products\\_and\\_services/marine\\_resources/marine\\_resource\\_assessments.html](http://www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html) (accessed October 12, 2017).

Table 1 lists all species with expected potential for occurrence in the vicinity of NSM and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species

represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in

NMFS's U.S. 2016 SARs (Hayes *et al.*, 2016). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2016 SARs (Hayes *et al.*, 2016).

In addition, the West Indian manatees may be found in the vicinity of NSM. However, West Indian manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
<b>Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)</b>						
<b>Family Eschrichtiidae</b>						
<i>North Atlantic Right Whale.</i>	<i>Eubalaena glacialis</i> .....	Western North Atlantic ..	E/D; Y	440 (0; 440; 2013) .....	1	5.66
<i>Humpback whale</i> .....	<i>Megaptera novaeangliae</i>	Gulf of Maine .....	-; N	823 (0; 823; 2011) .....	13	9.05
<b>Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>						
<b>Family Delphinidae</b>						
<i>Atlantic Spotted Dolphin</i>	<i>Stenella frontalis</i> .....	Western North Atlantic ..	-; N	44,715 (0.43; 31,610; 2011).	316	0
Common bottlenose dolphin.	<i>Tursiops truncatus truncatus.</i>	Jacksonville Estuarine System.	-; Y	412 (0.06; unk; 1994–97) <sup>4</sup> .	unk	1.2
Common bottlenose dolphin.	<i>Tursiops truncatus truncatus.</i>	Western North Atlantic, northern Florida coastal.	-/D; Y	1,219 (0.67; 730; 2010–11).	7	0.4
Common bottlenose dolphin.	<i>Tursiops truncatus truncatus.</i>	Western North Atlantic, offshore.	-; N	77,532 (0.40; 56,053; 2011).	63	0–12
Common bottlenose dolphin.	<i>Tursiops truncatus truncatus.</i>	Western North Atlantic, southern migratory coastal.	-/D; Y	9,173 (0.46; 6,326; 2010–11).	63	0–12

<sup>1</sup> 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.

<sup>2</sup> NMFS marine mammal stock assessment reports online at: [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/). CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable.

<sup>3</sup> 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.

<sup>4</sup> This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

**Note**—*Italicized species are not expected to be taken or proposed for authorization.*

All species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal and/or spatial occurrence of North Atlantic right whales, humpback whales, and Atlantic spotted dolphins is such that take is not expected to occur.

Regarding North Atlantic right whales, an estimate of potential exposures shows that there is potential for two Level B exposures of North Atlantic right whales from vibratory pile driving. However, the North Atlantic right whale density used in this analysis reflects their expected occurrence in waters outside of the St. Johns River, as there is no applicable density for waters affected by the specified activity. We consider the likelihood of occurrence to be extremely low, given that the only known sighting of a North Atlantic right whale in the St. Johns River occurred in 2011, resulting in a disruption of all

boat traffic (Gibbons 2011; Cravey 2016). Therefore, the potential for interaction with this species is unlikely and NMFS does not believe take authorization is warranted for right whales. The Navy has not requested, and NMFS is not proposing to authorize, incidental take of right whales.

The likelihood of encountering a humpback whale in NSM or around the mouth of the river is similarly considered discountable. In the winter, some humpback whales migrate from their summer foraging grounds in the Gulf of Maine to their winter breeding habitat around the Cape Verde Islands and West Indies (Stevick *et al.*, 1998; Wenzel *et al.*, 2009; Stevick *et al.*, 2016). Significant numbers of whales do not migrate to these wintering grounds, and there have been a number of humpback whale sightings and detections in the southeastern U.S. during the winter

(Wiley *et al.*, 1995; Laerm *et al.*, 1997; Norris *et al.*, 2013; Waring *et al.*, 2014). When considering the low frequency of occurrence, small size of ensonified area, short duration (40 days total), and proposed monitoring and mitigation (see *Proposed Mitigation* and *Proposed Monitoring and Reporting* below), we consider the possibility for harassment of humpback and right whales to be discountable.

Concerning Atlantic spotted dolphins, no acoustic exposures were predicted and, from recent observation reports from the Navy from previous construction activity at Naval Station Mayport, no spotted dolphins were observed. Similarly, dolphin research studies that have been conducted in the area also reported zero observed spotted dolphins in the project area (Q. Gibson, pers. comm. with L. McCue, NMFS Office of Protected Resources, 2015). We

consider the likelihood of Atlantic spotted dolphins being impacted by the construction activities to be discountable based on this information, combined with the zero estimated exposures. Therefore, the North Atlantic right whale, humpback whale, and Atlantic spotted dolphins are excluded from further analysis and are not discussed further in this document.

#### *Bottlenose Dolphins*

Bottlenose dolphins are found worldwide in tropical to temperate waters and can be found in all depths from estuarine inshore to deep offshore waters. Temperature appears to limit the range of the species, either directly, or indirectly, for example, through distribution of prey. Off North American coasts, common bottlenose dolphins are found where surface water temperatures range from about 10 °C to 32 °C. In many regions, including the southeastern U.S., separate coastal and offshore populations are known. There is significant genetic, morphological, and hematological differentiation evident between the two ecotypes (e.g., Walker 1981; Duffield *et al.*, 1983; Duffield 1987; Hoelzel *et al.*, 1998), which correspond to shallow, warm water and deep, cold water. Both ecotypes have been shown to inhabit the western North Atlantic (Hersh and Duffield 1990; Mead and Potter 1995), where the deep-water ecotype tends to be larger and darker. In addition, several lines of evidence, including photo-identification and genetic studies, support a distinction between dolphins inhabiting coastal waters near the shore and those present in the inshore waters of bays, sounds and estuaries. This complex differentiation of bottlenose dolphin populations is observed throughout the Atlantic and Gulf of Mexico coasts where bottlenose dolphins are found, although estuarine populations have not been fully defined.

In the Mayport area, four stocks of bottlenose dolphins are currently managed, none of which are protected under the ESA. Of the four stocks—offshore, southern migratory coastal, northern Florida coastal, and Jacksonville estuarine system—only the latter three are likely to occur in the action area. Bottlenose dolphins typically occur in groups of 2–15 individuals (Shane *et al.*, 1986; Kerr *et al.*, 2005). Although significantly larger groups have also been reported, smaller groups are typical of shallow, confined waters. In addition, such waters typically support some degree of regional site fidelity and limited movement patterns (Shane *et al.*, 1986; Wells *et al.*, 1987). Observations made

during marine mammal surveys conducted during 2012–2013 in the Mayport turning basin show bottlenose dolphins typically occurring individually or in pairs, or less frequently in larger groups. The maximum observed group size during these surveys was six, while the mode was one. Navy observations indicate that bottlenose dolphins rarely linger in a particular area in the turning basin, but rather appear to move purposefully through the basin and then leave, which likely reflects a lack of biological importance for these dolphins in the basin. Based on currently available information, it is not possible to determine the stock to which the dolphins occurring in the action area may belong. These stocks are described in greater detail below.

*Western North Atlantic Offshore*—This stock, consisting of the deep-water ecotype or offshore form of bottlenose dolphin in the western North Atlantic, is distributed primarily along the outer continental shelf and continental slope, but has been documented to occur relatively close to shore (Waring *et al.*, 2014). The separation between offshore and coastal morphotypes varies depending on location and season, with the ranges overlapping to some degree south of Cape Hatteras. Based on genetic analysis, Torres *et al.* (2003) found a distributional break at 34 km from shore, with the offshore form found exclusively seaward of 34 km and in waters deeper than 34 m. Within 7.5 km of shore, all animals were of the coastal morphotype. More recently, coastwide, systematic biopsy collection surveys were conducted during the summer and winter to evaluate the degree of spatial overlap between the two morphotypes. South of Cape Hatteras, spatial overlap was found although the probability of a sampled group being from the offshore morphotype increased with increasing depth, and the closest distance for offshore animals was 7.3 km from shore, in water depths of 13 m just south of Cape Lookout (Garrison *et al.*, 2003). The maximum radial distance for the largest ZOI is approximately 1.2 km (Table 2); therefore, it is unlikely that any individuals of the offshore morphotype would be affected by project activities. In terms of water depth, the affected area is generally in the range of the shallower depth reported for offshore dolphins by Garrison *et al.* (2003), but is far shallower than the depths reported by Torres *et al.* (2003). South of Cape Lookout, the zone of spatial overlap between offshore and coastal ecotypes is generally considered to occur in water

depths between 20–100 m (Waring *et al.*, 2014), which is generally deeper than waters in the action area. This stock is thus excluded from further analysis.

*Western North Atlantic, southern migratory coastal*—The coastal morphotype of bottlenose dolphin is continuously distributed from the Gulf of Mexico to the Atlantic and north approximately to Long Island (Waring *et al.*, 2014). On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal stock, citing stranding patterns during a high mortality event in 1987–88 and observed density patterns. More recent studies demonstrate that there is instead a complex mosaic of stocks (Zolman 2002; McLellan *et al.*, 2002; Rosel *et al.*, 2009). The coastal morphotype was managed by NMFS as a single stock until 2009, when it was split into five separate stocks, including northern and southern migratory stocks. The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. Therefore, all coastal stocks of bottlenose dolphins are listed as depleted under the MMPA, and are also considered strategic stocks.

According to the Scott *et al.* (1988) hypothesis, a single stock was thought to migrate seasonally between New Jersey (summer) and central Florida (winter). Instead, it was more recently determined that a mix of resident and migratory stocks exists, with the migratory movements and spatial distribution of the southern migratory stock the most poorly understood of these. Stable isotope analysis and telemetry studies provide evidence for seasonal movements of dolphins between North Carolina and northern Florida (Knoff 2004; Waring *et al.*, 2014), and genetic analyses and tagging studies support differentiation of northern and southern migratory stocks (Rosel *et al.*, 2009; Waring *et al.*, 2014). Although there is significant uncertainty regarding the southern migratory stock's spatial movements, telemetry data indicates that the stock occupies waters of southern North Carolina (south of Cape Lookout) during the fall (October–December). In winter months (January–March), the stock moves as far south as northern Florida where it overlaps spatially with the northern Florida coastal and Jacksonville estuarine system stocks. In spring (April–June), the stock returns north to waters of North Carolina, and is presumed to remain north of Cape Lookout during the summer months. Therefore, the

potential exists for harassment of southern migratory dolphins, most likely during the winter only.

Bottlenose dolphins are ubiquitous in coastal waters from the mid-Atlantic through the Gulf of Mexico, and therefore interact with multiple coastal fisheries, including gillnet, trawl, and trap/pot fisheries. Stock-specific total fishery-related mortality and serious injury cannot be directly estimated because of the spatial overlap among stocks of bottlenose dolphins, and because of unobserved fisheries. The primary known source of fishery mortality for the southern migratory stock is the mid-Atlantic gillnet fishery (Waring *et al.*, 2014). Between 2004 and 2008, 588 bottlenose dolphins stranded along the Atlantic coast between Florida and Maryland that could potentially be assigned to the southern migratory stock, although the assignment of animals to a particular stock is impossible in some seasons and regions due to spatial overlap amongst stocks (Waring *et al.*, 2014). Many of these animals exhibited some evidence of human interaction, such as line/net marks, gunshot wounds, or vessel strike. In addition, nearshore and estuarine habitats occupied by the coastal morphotype are adjacent to areas of high human population and some are highly industrialized. It should also be noted that stranding data underestimate the extent of fishery-related mortality and serious injury because not all of the marine mammals that die or are seriously injured in fishery interactions are discovered, reported or investigated, nor will all of those that are found necessarily show signs of entanglement or other fishery interaction. The level of technical expertise among stranding network personnel varies widely as does the ability to recognize signs of fishery interactions. Finally, multiple resident populations of bottlenose dolphins have been shown to have high concentrations of organic pollutants (*e.g.*, Kuehl *et al.*, 1991) and, despite little study of contaminant loads in migrating coastal dolphins, exposure to environmental pollutants and subsequent effects on population health is an area of concern and active research.

*Western North Atlantic, Northern Florida Coastal*—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks. The northern Florida coastal stock is one of five stocks of coastal dolphins and one of three known resident stocks (other resident stocks include South Carolina/Georgia and central Florida dolphins). The spatial extent of these stocks, their

potential seasonal movements, and their relationships with estuarine stocks are poorly understood. During summer months, when the migratory stocks are known to be in North Carolina waters and further north, bottlenose dolphins are still seen in coastal waters of South Carolina, Georgia and Florida, indicating the presence of additional stocks of coastal animals. Speakman *et al.* (2006) documented dolphins in coastal waters off Charleston, South Carolina, that are not known resident members of the estuarine stock, and genetic analyses indicate significant differences between coastal dolphins from northern Florida, Georgia and central South Carolina (NMFS 2001; Rosel *et al.*, 2009). The northern Florida stock is thought to be present from approximately the Georgia-Florida border south to 29.4° N. (Waring *et al.*, 2014).

The northern Florida coastal stock ventures into the St. Johns River in large numbers, but rarely moves past NSM. The mouth of the St. Johns River may serve as a foraging area for this stock and the Jacksonville estuarine stock (Q. Gibson, pers. comm. with L. McCue, NMFS Office of Protected Resources, 2015).

The northern Florida coastal stock is susceptible to interactions with similar fisheries as those described above for the southern migratory stock, including gillnet, trawl, and trap/pot fisheries. From 2004–08, 78 stranded dolphins were recovered in northern Florida waters, although it was not possible to determine whether there was evidence of human interaction for the majority of these (Waring *et al.*, 2014). The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for southern migratory dolphins, pollutant loading is a concern.

*Western North Atlantic, Jacksonville Estuarine System*—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks primarily inhabiting nearshore waters. The coastal morphotype of bottlenose dolphin is also resident to certain inshore estuarine waters (Caldwell 2001; Gubbins 2002; Zolman 2002; Gubbins *et al.*, 2003). Multiple lines of evidence support demographic separation between coastal dolphins found in nearshore waters and those in estuarine waters, as well as between dolphins residing within estuaries along the Atlantic and Gulf coasts (*e.g.*, Wells *et al.*, 1987; Scott *et al.*, 1990; Wells *et al.*, 1996; Cortese 2000; Zolman 2002; Speakman *et al.*, 2006; Stolen *et al.*, 2007; Balmer *et al.*, 2008; Mazzoil *et al.*, 2008). In particular,

a study conducted near Jacksonville demonstrated significant genetic differences between coastal and estuarine dolphins (Caldwell 2001; Rosel *et al.*, 2009). Despite evidence for genetic differentiation between estuarine and nearshore populations, the degree of spatial overlap between these populations remains unclear. Photo-identification studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals (*e.g.*, Speakman *et al.*, 2006). In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter time scales is poorly understood (Waring *et al.*, 2014).

The Jacksonville estuarine system (JES) stock has been defined as separate primarily by the results of photo-identification and genetic studies. The stock range is considered to be bounded in the north by the Georgia-Florida border at Cumberland Sound, extending south to approximately Jacksonville Beach, Florida. This encompasses an area defined during a photo-identification study of bottlenose dolphin residency patterns in the area (Caldwell 2001), and the borders are subject to change upon further study of dolphin residency patterns in estuarine waters of southern Georgia and northern/central Florida. The habitat is comprised of several large brackish rivers, including the St. Johns River, as well as tidal marshes and shallow riverine systems. Three behaviorally different communities were identified during Caldwell's (2001) study: The estuarine waters north (Northern) and south (Southern) of the St. Johns River and the coastal area, all of which differed in density, habitat fidelity and social affiliation patterns. The coastal dolphins are believed to be members of a coastal stock, however (Waring *et al.*, 2014). Although Northern and Southern members of the JES stock show strong site fidelity, members of both groups have been observed outside their preferred areas. Dolphins residing within estuaries south of Jacksonville Beach down to the northern boundary of the Indian River Lagoon Estuarine System (IRLES) stock are currently not included in any stock, as there are insufficient data to determine whether animals in this area exhibit affiliation to the JES stock, the IRLES stock, or are simply transient animals associated with coastal stocks. Further research is needed to establish affinities of dolphins in the area between the ranges, as currently understood, of the JES and IRLES stocks.

The JES stock is susceptible to similar fisheries interactions as those described



above for coastal stocks, although only trap/pot fisheries are likely to occur in estuarine waters frequented by the stock. Only one dolphin carcass bearing evidence of fisheries interaction was recovered during 2003–07 in the JES area, and an additional 16 stranded dolphins were recovered during this time, but no determinations regarding human interactions could be made for the majority (Waring *et al.*, 2014). Nineteen bottlenose dolphins died in the St. Johns River (SJR), Florida between May 24 and November 7, 2010, all of which came from the JES stock. The cause of these deaths was undetermined. The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for stocks discussed above, pollutant loading is a concern. Although no contaminant analyses have yet been conducted in this area, the JES stock inhabits areas with significant drainage from industrial and urban sources, and as such is exposed to contaminants in runoff from these. In other estuarine areas where such analyses have been conducted, exposure to anthropogenic contaminants has been found to likely have an effect (Hansen *et al.* 2004; Schwacke *et al.*, 2004; Reif *et al.*, 2008).

The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. However, Scott *et al.* (1988) suggested that dolphins residing in the bays, sounds and estuaries adjacent to these coastal waters were not affected by the mortality event and these animals were explicitly excluded from the depleted listing (Waring *et al.*, 2014). Gubbins *et al.* (2003), using data from Caldwell (2001), estimated the stock size to be 412 (CV = 0.06). However, NMFS considers abundance unknown because this estimate likely includes an unknown number of non-resident and seasonally-resident dolphins. It nevertheless represents the best available information regarding stock size. Because the stock size is likely small, and relatively few mortalities and serious injuries would exceed PBR, the stock is considered to be a strategic stock (Waring *et al.*, 2014).

A UME occurred between 2013 and 2015 spanning the Atlantic coast, which impacted all stocks of bottlenose dolphins in the area. Over 1,800 dolphins stranded in this time period. The preliminary conclusion of the cause of this UME was morbillivirus. The bottlenose dolphin stocks in this area (SJR and coastal areas) may be

considered vulnerable to impacts from future activities due to this recent event.

#### *Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibels (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. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz), with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus*; including two members of the genus *Lagenorhynchus*, on the basis of recent echolocation data and genetic data): Generalized hearing is

estimated to occur between approximately 275 Hz and 160 kHz.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Bottlenose dolphins, the species that could co-occur with proposed survey activities and for which take is estimated, are classified as mid-frequency cetaceans.

#### **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* 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* 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.

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notice of proposed authorization associated with the first IHA for recapitalization at Bravo Wharf (80 FR 75978; 7 December 2015). The specified activity associated with this proposed IHA is substantially similar to that considered for the first IHA, and the potential effects of the specified activity are nearly the same as those identified in those documents. In the aforementioned **Federal Register** notice, we also provided general background information on sound and a description of sound sources and ambient sound and refer the reader to those documents. Therefore, we briefly summarize potential effects here, but refer the reader to that document (80 FR 75978; 7 December 2015).

An increase in noise levels from pile driving in waters surrounding NSM is the primary means by which marine mammals and their habitat could be impacted. Marine mammals exposed to elevated sound levels could experience physical and behavioral effects, though the magnitude of potential impact depends on a range of factors on the physical environment and biological state of marine mammals, such as sound type (*e.g.* impulsive sounds of impact driving or non-impulsive sound of vibratory pile driving), bottom profile characteristics, species, age and sex

class, duration of exposure, and many other factors (Wartzok *et al.*, 2003; Southall *et al.*, 2007; Hildebrand 2009). Potential effects include potential behavioral harassment (*e.g.* avoidance behavior or temporary displacement), masking—or interference, with marine mammals' ability to receive other sounds vital for biological functioning, and increased stress.

#### *Marine Mammal Habitat Effects*

There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area, though the surrounding areas may be foraging habitat for the dolphins. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.*, fish) within NSM. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Furthermore, sound pulses at received levels of 160 dB re 1  $\mu$ Pa (all dB values in this document are referenced to a pressure of 1  $\mu$ Pa) may cause subtle changes in fish behavior, while SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality, though the most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

The Mayport turning basin itself is a man-made basin with significant levels of industrial activity and regular dredging, and is unlikely to harbor significant amounts of forage fish. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on marine mammal prey or their habitat.

#### **Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA,

which will inform both NMFS's consideration of whether the number of takes is "small" 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 be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to vibratory and impact pile driving. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of 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. Below, we describe these components 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) (Table 2).

*Level B Harassment for non-explosive sources*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2011). 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 micro Pascal ( $\mu$ Pa) root mean square (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1  $\mu$ Pa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources.

Recapitalization of Bravo Wharf includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1  $\mu$ Pa (rms) thresholds are applicable.

*Level A harassment for non-explosive sources*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive) (Table 2). The Navy's proposed recapitalization of Bravo Wharf includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at <http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm>.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset thresholds	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans .....	$L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB .....	$L_{E,LF,24h}$ : 199 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.

\* 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.

*Distance to Sound Thresholds*

*Underwater Sound Propagation*

**Formula**—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R1/R2),$$

Where:

- R1 = the distance of the modeled SPL from the driven pile, and
- R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive

conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20\*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10\*log[range]). A practical spreading value of fifteen is often used under conditions, such as at the NSM turning basin, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

**Underwater Sound**—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. However, these data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles.

Vibratory driving of steel sheet piles was monitored during the first year of construction at the nearby Wharf C–2 at Naval Station Mayport during 2015. Measurements were conducted from a small boat in the turning basin and from the construction barge itself. Average SPLs for steel sheet piles ranged from 135 to 158 dB (DoN 2015) and SPLs for a 10-second period of driving averaged 156 dB re 1μPa rms (DoN, 2017a). No impact driving was measured at this location; therefore, proxy levels for impact driving have been calculated from other available source levels.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from impact pile driving at NSM, we considered existing measurements from similar physical environments (sandy sediments and water depths greater than 15 ft) for driving of steel sheet piles (all measured at 10 m; e.g., Laughlin, 2005a, 2005b; Illingworth and Rodkin, 2010, 2012, 2013; CalTrans 2012; CalTrans 2015). Proxy source values based on similarity to the physical environment at NSM and measurement location in the mid-water column were selected for acoustic modeling: 156 dB for vibratory driving (DoN 2017a) and 190 dB for impact driving (CalTrans 2015). All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 3.

TABLE 3—DISTANCE TO RELEVANT UNDERWATER SOUND TRESHOLDS AND AREAS OF ENSONIFICATION

Pile type	Method	Threshold	Distance (m)	Area (km <sup>2</sup> )
Steel sheet piles .....	Vibratory .....	MF Level A (injury): 198 dB SELcum .....	0.1	0
		Level B (behavior): 120 dB re 1μPa rms .....	2,512	1.3550776
	Impact (contingency only)	MF Level A (injury): 185 dB SELcum .....	7.7	0.004
		Level B (behavior): 160 dB re 1μPa rms .....	1,000	0.5313217

<sup>1</sup> Sound pressure levels used for calculations are 156 dB rms and 190 dB rms for vibratory and impact driving, respectively.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 3 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 and 6–2 of the Navy’s application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

*Marine Mammal Occurrence*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

*Marine Mammal Densities*

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. All densities for marine mammals with the possibility of occurring in the project area were calculated from the Navy’s Marine Species Density Database and Technical Report (DoN 2017b). Density for bottlenose dolphins is derived from site-specific surveys conducted by the Navy (see Appendix C of the Navy’s application for more information); it is not currently possible to identify observed individuals to stock. This survey effort consists of 24 half-day observation periods covering mornings and afternoons during four seasons (December 10–13, 2012, March 4–7, 2013, June 3–6, 2013, and September 9–12, 2013). During each observation period, two observers (a primary observer at an elevated observation point and a secondary observer at ground level) monitored for the presence of marine mammals in the turning basin (0.712 km<sup>2</sup>) and an additional grid east of the basin entrance. Observers tracked marine

mammal movements and behavior within the observation area, with observations recorded for five-minute intervals every half-hour. Morning sessions typically ran from 7:00–11:30 and afternoon sessions from 1:00 to 5:30.

Most observations of bottlenose dolphins were of individuals or pairs, although larger groups were occasionally observed (median number of dolphins observed ranged from 1–3.5 across seasons). Densities were calculated using observational data from the primary observer supplemented with data from the secondary observer for grids not visible by the primary observer. Season-specific density was then adjusted by applying a correction factor for observer error (*i.e.*, perception bias). The seasonal densities range from 1.98603 (winter) to 4.15366 (summer) dolphins/km<sup>2</sup>. We conservatively use the largest density value to assess take, as the Navy does not have specific information about when in-water work may occur during the proposed period of validity.

*Take Calculation and Estimation*

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The following assumptions are made when estimating potential incidents of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- There will be 30 total days of vibratory driving and 10 days of contingency of impact pile driving;
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

$$\text{Exposure estimate (rounded to the nearest whole number)} = n * \text{ZOI} * \text{total activity days}$$

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

The ZOI impact area is estimated using the relevant distances in Table 3, taking into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-facing entrance channel, the radial distances to thresholds are not generally reached.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative.

The quantitative exercise described above indicates that no incidents of Level A harassment would be expected, independent of the implementation of required mitigation measures. See Table 4 for total estimated incidents of take.

TABLE 4—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km <sup>2</sup> )	Activity	n * ZOI <sup>1</sup>	Proposed authorized takes <sup>2</sup>
<b>Phase II (40 days)</b>				
Bottlenose dolphin <sup>1</sup> .....	4.15366	Vibratory driving (30 days) .....	6	169
Bottlenose dolphin <sup>3</sup> .....	4.15366	Contingency impact driving (10 days) .....	2	22
Total exposures .....	.....	.....	.....	191

<sup>1</sup> See Table 3 for relevant ZOIs. The product of this calculation is rounded to the nearest whole number.

<sup>2</sup> The product of n \* ZOI \* total activity days (rounded to the nearest whole number) is used to estimate the number of takes.

<sup>3</sup> It is impossible to estimate from available information which stock these takes may accrue to.

### 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.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see *Estimated Take*); these values were used to develop mitigation measures for pile driving activities at NSM. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In

addition to the specific measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

#### *Monitoring and Shutdown for Pile Driving*

**Shutdown Zone**—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the acoustic injury criteria for mid-frequency hearing specialists (e.g. bottlenose dolphins) at 198 dB SEL<sub>cum</sub> for vibratory driving and 185 dB SEL<sub>cum</sub> for impact driving. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under *Potential Effects of the Specified Activity on Marine Mammals*, serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 3. However, a minimum shutdown zone of 15 m (which is larger than the maximum predicted injury zone) will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding 198 dB SEL<sub>cum</sub> threshold, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury.

**Disturbance Zone**—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone

monitoring is discussed in greater detail later (see *Proposed Monitoring and Reporting*). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (e.g., what may be reasonably observed by visual observers stationed within the turning basin) would be observed.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

**Monitoring Protocols**—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence within the ZOI and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan ([www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm)), developed by the Navy in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Marine mammal observer (MMO) requirements for this construction action are as follows:

(a) At least one observer must have prior experience working as an observer.

(b) Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience.

(c) 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.

(2) Qualified MMOs are trained biologists, and need the following additional minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Ability to conduct field observations and collect data according to assigned protocols

(c) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(d) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(e) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(f) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.*, when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving

that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes (30 minutes in the case of a large whale) have passed without re-detection of the animal. Should any marine mammal not authorized for Level B harassment in this IHA enter the ensonified area, pile driving will cease until the animal(s) leaves the area and will resume after the observer has determined through re-sighting or by waiting 15 minutes that the animal moved outside the ensonified area. Monitoring will be conducted throughout the time required to drive a pile.

(4) Monitoring of the shutdown zone will continue for 30 minutes following completion of construction activity.

**Soft-Start**—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in “bouncing” of the hammer as it strikes the pile, resulting in multiple “strikes.” For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

#### Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the

monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat);
- Mitigation and monitoring effectiveness.

The Navy's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the Internet at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).

#### Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal

identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted; and
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

#### Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;

- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;

- Duration of marine mammals within the shutdown area;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (e.g., shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

#### Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

#### Prior Monitoring

The Navy met all monitoring requirements for similar construction activity at nearby Wharf C-2 in NSM (80 FR 55598, 8 September 2015; 78 FR 71566, 1 December 2013 and revised IHA for this activity: 79 FR 27863, 1 September 2014). During the course of both IHAs, the Navy did not exceed authorized take levels. The first IHA (covering the period of May 26 to August 17, 2015) authorized incidental take of 365 bottlenose dolphins and 95 Atlantic spotted dolphins by Level B harassment. Observers documented 272 bottlenose dolphins based on derived correction factors, and no Atlantic spotted dolphins were observed (DoN 2015b). As mentioned in the *Estimated Take* section, the Navy also monitored underwater acoustics during vibratory installation of king piles and steel sheet piles during the period of this IHA at NSM; the sound pressure level average ranged from 135 to 158 dB and averaged 21 seconds to install a sheet pile (DoN 2015b). Collection of underwater sound and production of a subsequent report

was not required under the respective IHA, and is thus not discussed below for the second IHA at Wharf C-2.

An IHA for the second year of construction (covering a period from September 8, 2015 to September 7, 2016) authorized incidental take of 304 total bottlenose dolphins. After applying correction factors to derive a total number of estimated takes, estimated Level B takes were calculated to be 128 bottlenose dolphins (DoN 2016).

#### Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the

activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency). Vibratory pile driving does have the potential to cause injury to marine mammals, but sound pressure levels in this activity (156 dB rms) do not exceed the threshold for injury in mid-frequency cetaceans. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient “notice” through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff 2006; HDR Inc. 2012). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. These activities are also nearly identical to the pile driving activities that took place at Wharf C–2 at NSM, which also reported zero injuries or mortality to marine mammals and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely

to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the turning basin while the activity is occurring.

The turning basin is not considered important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The surrounding waters may be an important foraging habitat for the dolphins, but the small area of ensonification does not extend outside of the turning basin and into this foraging habitat (see Figure 6–1 in the Navy’s application). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals that may venture near the turning basin, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or injury is anticipated or authorized;
- Behavioral disturbance is possible, but the significance to the affected stocks is expected to be minimal due to:
  - No more than 40 days of pile driving during the proposed authorized year;
  - The time required to drive each pile is brief, with no more than 60 seconds per pile via vibratory driving and no more than 10 minutes per pile via impact driving;
  - Proposed mitigation (e.g. shutdowns and soft start) would reduce acoustic impacts to species in the area of activities;
  - The absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; Noise associated with pile driving will ensonify relatively small

areas, the majority of which are within the industrialized turning basin.

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 Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Of the 191 incidents of behavioral harassment proposed to be authorized for bottlenose dolphins, we have no information allowing us to parse the predicted incidents amongst the four stocks that may occur in the project area. Therefore, we assessed the total number of predicted incidents of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For two of the bottlenose dolphin stocks—Western North Atlantic Southern Migratory Coastal and Western North Atlantic Northern Florida coastal stock—the total predicted number of incidents of take authorized would be considered small at 2.82 percent and 15.67 percent, respectively. This estimate assumes that estimated take occurs to a new individual, which is an extremely unlikely scenario and therefore a conservative estimate, as there is likely to be some overlap in both bottlenose dolphin stocks and individuals from day to day. Likelihood of actual take to the latter Northern Florida coastal stock is relatively low, and this estimate assumes all takes would occur to this one stock. In the western North Atlantic, the Northern Florida Coastal Stock is present in coastal Atlantic waters from the Georgia/Florida border south to 29.4° N. (Waring *et al.*, 2014), a span of more than 90 miles. There is no obvious



boundary defining the offshore extent of this stock. They occur in waters less than 20 m deep; however, they may also occur in lower densities over the continental shelf (waters between 20 m and 100 m depth) and overlap spatially with the offshore morphotype (Waring *et al.*, 2014).

For the other stock, the Jacksonville Estuarine System stock, if all takes occurred to this one stock, this could take 46.36 percent of the stock (n=412). It is, however, highly unlikely that all takes would occur to this one stock due to their distribution relative to Bravo Wharf and social patterns within stock range. JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Jacksonville Beach, FL, an area consisting of coastline and complex estuarine habitat of riverines and tidal marshes. Three behaviorally different communities exist within the JES stock: In estuarine waters north of St. Johns River (termed the Northern area), estuarine waters south of St. Johns River to Jacksonville Beach (the Southern area), and the coastal area (Caldwell 2001). Caldwell (2001) found that dolphins in the northern area exhibit year-round site fidelity and are the most isolated of the three communities. They are also not known to socialize with dolphins in the Southern area, which show summer site fidelity but traverse in and out of the Jacksonville area each year (Caldwell 2001). Dolphins in the coastal area are much more mobile, exhibit fluid social patterns, and show no long-term site fidelity. Furthermore, genetic analysis also supports differentiation from JES dolphins between the Northern and Southern areas (Caldwell 2011). Although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities. In summary, JES dolphins largely comprise two predominant groups and exhibit strong site fidelity to those areas, which does not significantly overlap with the larger ZOI, which is almost entirely confined within NSM.

Furthermore, assessing potential impacts to individuals or stocks based on take estimates alone, in the absence

of further context (*e.g.* quality of surrounding habitat, site fidelity, etc.), has limitations. It is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound, given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.*, because of foraging opportunities) is stronger than the deterrence presented by the harassing activity. Given stock distribution, site fidelity, social patterns, the small likelihood that all takes would occur to new individuals within this stock, and that fact that NSM does not include any particularly unique habitat to aggregate dolphins, the majority of JES dolphins are not expected to occur within ensonified waters of project activities. Therefore, proposed takes are not expected to exceed small numbers relative to stock abundance.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or

species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that consultation under Section 7 of the ESA is not required for this action.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the U.S. Navy for conducting pile driving associated with recapitalization of Bravo Wharf at NSM, Jacksonville, FL from March 13, 2018 to March 12, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for one year from March 13, 2018 to March 12, 2019.

2. This IHA is valid only for pile driving activities associated with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking is the bottlenose dolphin (*Tursiops truncatus*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS

Species	Proposed authorized take	
	Level B	Level A
Bottlenose dolphin .....	191	0

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

#### 4. Mitigation measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) For all pile driving, the Navy shall implement a minimum shutdown zone of 15 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease;

(b) The Navy shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (*see [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm)*);

i. For all pile driving activities, a minimum of two observers shall be deployed, with one positioned to achieve optimal monitoring of the shutdown zone and the second positioned to achieve optimal monitoring of surrounding waters of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean. If practicable, the second observer should be deployed to an elevated position, preferably opposite Bravo Wharf and with clear sight lines to the wharf and out the entrance channel;

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations within the turning basin shall be distinguished from those in the entrance channel and nearshore waters of the Atlantic Ocean; and

iii. All observers shall be equipped for communication of marine mammal observations amongst themselves and to other relevant personnel (*e.g.*, those necessary to effect activity delay or shutdown);

(c) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. In the event of a delay or shutdown of activity resulting from marine mammals

in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye);

(d) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. No pile driving may occur if any whale is detected within the Level B harassment zone (*e.g.* pile driving must be delayed or cease until the animal leaves the ZOI for at least 30 minutes).

(e) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible);

(f) The Navy shall use soft start techniques recommended by NMFS for impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer; and

(g) Pile driving shall only be conducted during daylight hours.

#### 5. Monitoring

The holder of this Authorization is required to conduct marine mammal

monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

#### 6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for projects at NSM, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum, and shall also include:

i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any;

ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals; and

iii. An estimated total take estimate extrapolated from the number of marine mammals observed during the course of construction activities, if necessary;

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate; and

iii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

#### Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed construction activities. Please include with your comments any supporting data or literature citations to

help inform our final decision on the request for MMPA authorization.

Dated: November 20, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2017-25482 Filed 11-24-17; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XF857**

#### Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

**DATES:** The meetings will be held Monday, December 11, 2017 through Thursday, December 14, 2017. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held at: The Westin Annapolis, 100 Westgate Circle, Annapolis, MD 21401, telephone: (410) 972-4300.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526-5255. The Council's Web site, [www.mafmc.org](http://www.mafmc.org) also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

**SUPPLEMENTARY INFORMATION:** The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's Web site when possible.)

#### Monday, December 11, 2017

Ecosystem Approach to Fisheries Management Risk Assessment  
Review and approve EAFM based assessment  
Risk Policy Framework—Meeting 2  
Review and approve recommended modifications to Council's Risk Policy  
Magnuson-Stevens Act Reauthorization

Review proposed MSA reauthorization legislation and CCC Working Paper  
Tilefish Survey Project Report  
Update of the fisheries-independent pilot survey for tilefish

#### Tuesday, December 12, 2017

Executive Committee—CLOSED SESSION  
Ricks E Savage Award  
Squid Buffer Zone Framework—Meeting 1  
Discuss framework goals and review and approve preliminary alternatives  
Chub Mackerel Amendment  
Review scoping comments and discuss next steps  
Law Enforcement Reports  
Reports will be received from the NOAA Office of Law Enforcement and the U.S. Coast Guard  
Scup Recreational Specifications  
Review Monitoring Committee and Advisory Panel recommendations and adopt recommendations for 2018 Federal waters management measures  
Summer Flounder Recreational Specifications  
Review Monitoring Committee and Advisory Panel recommendations and recommend Conservation Equivalency or coastwide management and associated measures for 2018  
Summer Flounder Amendment  
Review and approve November 2017 Demersal Committee recommendations for further staff analysis

#### Wednesday, December 13, 2017

Black Sea Bass Recreational Specifications  
Review Monitoring Committee and Advisory Panel recommendations and adopt recommendations for 2018 Federal waters management measures. Review Wave 1 fishery implementation. Board Addendum XXX  
Black Sea Bass Wave 1 Letter of Authorization Framework  
Review background and provide guidance for development of draft alternatives  
Black Sea Bass Amendment  
Review initiation of black sea bass amendment (December 2015 motion)  
Bluefish Amendment  
Initiate Bluefish Amendment and discuss next steps  
Bureau of Ocean Energy Management Presentation  
Updates of Atlantic Offshore Renewable Projects and Atlantic

## Renewable Energy Studies

Thursday, December 14, 2017

## 2018 Implementation Plan

Review and approve 2018

Implementation Plan

## Business Session

Committee Reports; Executive

Director's Report (Golden Tilefish

IFQ review and NEFMC Framework

57 update); Science Report;

Organization Reports; Liaison

Reports

## Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: November 21, 2017.

Jeffrey N. Lonergan,

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

[FR Doc. 2017-25640 Filed 11-24-17; 8:45 am]

BILLING CODE 3510-22-P

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**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**
**Procurement List; Proposed Addition and Deletions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed addition to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and service previously furnished by such agencies.

**DATES:** Comments must be received on or before: December 27, 2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Addition**

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. The following service is proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Service*

*Service Type:* Grounds Maintenance  
*Mandatory for:* US Navy NAVFAC Mid Atlantic, Greater Sandy Run Area, Camp Davis, Onslow Beach, Wilson Bay, Hwy 24 Bell Fork foot Bridge & Verona Loop, Marine Corps Base, Camp Lejeune, NC

*Mandatory Source of Supply:* Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC

*Contracting Activity:* DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT

**Deletion**

The following products and service are proposed for deletion from the Procurement List:

*Products*

*NSNs/Product Names:* 9905-02-000-8089/Holder, Label, Brass 9905-02-000-8698/Holder, Label, Brass

*Mandatory Source of Supply:* CW Resources, Inc., New Britain, CT

*Contracting Activity:* U.S. Postal Service, Eagan, Eagan, MN

*NSN/Product Name:* 3920-02-000-1915/Bar Assembly, Door

*Mandatory Source of Supply:* Rauch, Inc., New Albany, IN

*Contracting Activity:* USPS, Topeka Purchasing Center, Topeka, KS

*NSNs/Product Names:*

7510-01-600-7561/Wall Calendar, Dated 2017, Wire Bound w/hanger, 15.5" x 22"  
7510-01-600-7564/Monthly Wall Calendar, Dated 2017, Jan-Dec, 8 1/2" x 11"

7510-01-600-7622/Wall Calendar, Dated 2017, Wire Bound w/Hanger, 12" x 17"

7530-01-600-7578/Daily Desk Planner, Dated 2017, Wire bound, Non-refillable, Black Cover

7530-01-600-7592/Weekly Desk Planner, Dated 2017, Wire Bound, Non-refillable, Black Cover

7530-01-600-7600/Weekly Planner Book, Dated 2017, 5" x 8", Digital Camouflage

7530-01-600-7611/Monthly Desk Planner, Dated 2017, Wire Bound, Non-refillable, Black Cover

*Mandatory Source of Supply:* Chicago

Lighthouse Industries, Chicago, IL

*Contracting Activity:* GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY

*NSN/Product Name:* 7510-01-600-8034/ Dated 2017 12-Month 2-Sided Laminated Wall Planner, 24" x 37"

*Contracting Activity:* GSA/FSS HOUSEHOLD AND INDUSTRIAL FURNITURE

*NSN/Product Name:* 3990-00-NSH-0078/ Pallet, Treated Wood, 70" x 42"

*Contracting Activity:* DEPT OF JUST/ FEDERAL PRISON SYSTEM

*NSNs/Product Names:*

8415-01-542-8496—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, MR

8415-01-542-8497—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, LR

8415-01-542-8498—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XL

8415-01-542-8499—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XL

8415-01-542-8500—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XXL

8415-01-542-8501—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XXXL

8415-01-542-8502—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XS

8415-01-542-8504—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, LL

8415-01-542-8505—Jacket, Loft, Extreme Cold Weather Level 7, Type 2, PCU, Army, Alpha Green, XXXLL

8415-01-542-8575—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXXL

8415-01-542-8576—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXXLL

8415-01-542-8577—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXXLL

8415-01-542-8580—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, LL

8415-01-542-8581—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, MR

8415-01-542-8582—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, SR

8415-01-542-8584—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XL

8415-01-542-8586—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XXL

8415-01-542-8587—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XLL  
 8415-01-542-8588—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, XS  
 8415-01-542-8589—Trousers, Loft Level 7, ECWCS, PCU, Army, Alpha Green, LR  
 8415-01-543-0377—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXXLL  
 8415-01-543-0382—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXL  
 8415-01-543-0384—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, LR  
 8415-01-543-0386—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXXLL  
 8415-01-543-0391—Vest, Loft, Level 7 Epic by Nextec, PCU, Army, Alpha Green, SR  
 8415-01-543-0392—Vest, Loft, Level 7 Epic by Nextec, PCU, Army, Alpha Green, MR  
 8415-01-543-0396—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, LL  
 8415-01-543-0399—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XL  
 8415-01-543-0401—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XLL  
 8415-01-543-0403—Vest, Loft, Rainproof, Level 7, PCU, Army, Alpha Green, XXXLL  
 8415-01-543-0404—Vest, Loft, Level 7 Epic by Nextec, PCU, Army, Alpha Green, XS  
 8415-01-543-1605—Jacket, Loft, Extreme Cold Weather Level 7, PCU, Type 1, Army, Alpha Green, XXXL  
 8415-01-543-1613—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, SR  
 8415-01-543-7022—Pants, Loft, Level 7, PCU, Army, Alpha Green, ML  
 8415-01-543-7042—Jacket, Loft, Extreme Cold Weather Level 7, Type 1, PCU, Army, Alpha Green, ML  
 8415-01-576-2044—Jacket, Wet Weather Level 6, PCU, Army, Men's, Desert Camouflage, XSR  
 8415-01-576-0098—Jacket, Wet Weather Level 6, PCU, Army, Men's, Desert Camouflage, MR  
 8415-01-576-2048—Jacket, Wet Weather Level 6, PCU, Army, Men's, Desert Camouflage, XXL  
 8415-01-543-7044 PCU Level 7 Loft Vest Alpha Green ML  
*Contracting Activity:* W6QK ACC-APG NATICK, DEPT OF THE ARMY

**Service**

*Service Type/Location:* Custodial Services/ Little Creek Naval Amphibious Base, Norfolk, VA  
*Mandatory Source of Supply:* Didlake, Inc., Manassas, VA  
*Contracting Activity:* DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT.

**Patricia Briscoe,**

*Deputy Director, Business Operations, (Pricing and Information Management).*

[FR Doc. 2017-25545 Filed 11-24-17; 8:45 am]

**BILLING CODE 6353-01-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and deletions from the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a product and services from the Procurement List previously furnished by such agencies.

**DATES:** *Date added to the Procurement List:* December 27, 2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Amy B. Jensen, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

#### SUPPLEMENTARY INFORMATION:

##### Addition

On 9/22/2017 (82 FR, No. 183), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

##### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.
2. The action will result in authorizing a small entity to provide the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in

connection with the service proposed for addition to the Procurement List.

##### End of Certification

Accordingly, the following service is added to the Procurement List:

##### Service

*Service Type:* Custodial Service  
*Mandatory for:* USDA Forest Service, Bridger-Teton National Forest Supervisor's Office, Jackson Ranger District & Teton Interagency Helibase, Jackson, WY  
*Mandatory Source of Supply:* Development Workshop, Inc., Idaho Falls, ID  
*Contracting Activity:* USDA FOREST SERVICE

##### Deletions

On 10/10/2017 (82 FR, No. 194) and 10/20/2017 (82 FR, No. 202), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

##### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product and services deleted from the Procurement List.

##### End of Certification

Accordingly, the following product and services are deleted from the Procurement List:

##### Product

*NSN—Product Name:* 8470-00-NSH-0031—Center Mounted Weapon Harness  
*Mandatory Source of Supply:* Employment Source, Inc., Fayetteville, NC  
*Contracting Activity:* Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, Natick, MA

##### Services

*Service Type:* Mail and Messenger Service  
*Mandatory for:* Naval Facilities Engineering Command (NAVFAC) Southern Division,

Charleston, SC  
**Mandatory Source of Supply:** Goodwill Industries of Lower South Carolina, Inc., North Charleston, SC  
**Contracting Activity:** DEPT OF THE NAVY, NAVY FACILITIES ENGINEERING COMMAND  
**Service Type:** Janitorial/Custodial Service  
**Mandatory for:** GSA, Parking Facilities Spring and Pearl Streets, Columbus, OH  
**Mandatory Source of Supply:** VGS, Inc., Cleveland, OH  
**Contracting Activity:** PUBLIC BUILDINGS SERVICE, ACQUISITION MANAGEMENT DIVISION

**Patricia Briscoe,**

*Deputy Director, Business Operations, (Pricing and Information Management)*

[FR Doc. 2017-25544 Filed 11-24-17; 8:45 am]

**BILLING CODE 6353-01-P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Notice of Intent to Prepare An Environmental Impact Statement And Environmental Impact Report for the Edwards Air Force Base Solar Enhanced Use Lease Project

**AGENCY:** Department of the States Air Force.

**ACTION:** Notice of intent.

**SUMMARY:** The United States Air Force (The Air Force) is issuing this notice to advise the public of the intent to prepare a joint Environmental Impact Statement and Environmental Impact Report with the County of Kern, California. The Environmental Impact Statement and Environmental Impact Report will assess the potential environmental consequences of various alternatives for development of the Edwards Air Force Base Solar Enhanced Use Lease Project.

**DATES:** The Air Force invites the public, stakeholders, and other interested parties to attend an open house public scoping meeting on December 12, 2017 from 5 p.m. to 8 p.m. at the Mojave Veterans Memorial Building located at address 15580 O Street, Mojave, California 93501.

**ADDRESSES:** Scoping comments may also be submitted to: Gary Hatch, Environmental Public Affairs, Bldg. 1405 Room 400, Edwards Air Force Base, California 93524; email: [412tw.pae@edwards.af.mil](mailto:412tw.pae@edwards.af.mil), Phone: 661-277-4127, Fax: (661) 277-2732. Handicap assistance or translation service at public meetings can be made available by providing advance notice to Mr. Hatch at the contact information listed above.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft Environmental Impact Statement, scoping comments should be submitted by January 12, 2017.

**SUPPLEMENTARY INFORMATION:** The Solar Enhanced Use Lease Project will be sited up to 4,000 acres of available, non-excess Air Force land located on Edwards Air Force Base. Alternatives which meet the purpose and need for the Proposed Action have been identified and include the No Action Alternative and two additional alternatives. Alternative A includes full-scale project development of a 600 Megawatt solar PV project and construction of a 150 Megawatt battery storage facility on up to 4,000 acres of Edwards Air Force Base property located in the northwestern corner of the base. Alternative B represents a reduced-scale alternative for the construction and operation of a 200 Megawatt solar PV project and construction of a 150 Megawatt battery storage facility. Under Alternative B, the reduced-scale project will be sited on up to 1,500 acres of Edwards Air Force Base non-excess property within the same project footprint as Alternative A. The project also includes construction of a Gen-tie line of approximately 10–14 miles in total length. The Gen-tie includes a north-south component and an east-west component. There are three alternatives for the north-south Gen-tie connection. The Proposed Action will include only one of these three north-south route options. There are two alternatives for the east-west Gen-tie connection. The Proposed Action will include only one of these two east-west route options. The Proposed Action is subject to the requirements and objectives of Executive Order 11988, Floodplain Management, as amended. All alternatives for the Proposed Action, including alternatives for the Gen-tie line will result in impacts to floodplains.

*Scoping and Agency Coordination:* To effectively define the full range of issues to be evaluated in the Environmental Impact Statement and Environmental Impact Report, the Air Force will determine the scope of the analysis by soliciting comments from interested local, state and federal elected officials and agencies, as well as interested members of the public and others. Implementation of the Edwards Solar Enhanced Use Lease Project would have the potential to be located in a floodplain and/or wetland. Consistent

with the requirements and objectives of Executive Order 11990, “Protection of Wetlands,” and Executive Order 11988, “Floodplain Management,” as amended by Executive Order 13690, “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” state and federal regulatory agencies with special expertise in wetlands and floodplains will be contacted to request comment. Consistent with Executive Order 11988, Executive Order 13690, and Executive Order 11990, this Notice of Intent initiates early public review of the alternatives that have the potential to be located in a floodplain and/or wetland. Notification of the meeting locations, dates, and times will be published and announced in local news media no later than 15 days prior to public scoping meetings.

The scoping process will help identify the full range of reasonable alternatives, potential impacts, and key issues to be emphasized in the environmental analysis. The Air Force has identified potential impacts to the following resources: Air Quality, Biological Resources, Cultural and Historical Resources, Water Resources, Land Use, Paleontological Resources, Soils, and Visual Resources. Scoping will assist the Air Force and Kern County in identifying and addressing other issues of concern.

Oral and written comments presented at the public scoping meetings, as well as written comments received by the Air Force or County of Kern will be considered in the preparation of the Draft Environmental Impact Statement and Environmental Report.

**Henry Williams,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2017-25556 Filed 11-24-17; 8:45 am]

**BILLING CODE 5001-10-P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### U.S. Air Force Scientific Advisory Board; Notice of Meeting

**AGENCY:** Department of the Air Force, Air Force Scientific Advisory Board.

**ACTION:** Meeting notice.

Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the Department of Defense announces that the United

States Air Force (USAF) Scientific Advisory Board (SAB) Winter Board meeting will take place on 23 January 2018 at the Beckman Center of National Academies of Science and Engineering, located at 100 Academy Drive, Irvine, California 92617. The purpose of this Air Force Scientific Advisory Board quarterly meeting is to kick-off the Scientific Advisory Board's FY18 studies, offering board members the opportunity to hear directly from a wide-range of Department of Defense subject matter experts and provide dedicated time to begin collaboration on research. The meeting will occur from 8:30 a.m.–4:15 p.m. on Tuesday, 23 January 2018. The session that will be open to the *general public* will be held from 8:30 a.m. to 9:00 a.m. on 23 January 2018. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, a number of sessions of the Air Force Scientific Advisory Board Winter Board meeting will be closed to the general public because they will discuss classified information and matters covered by Section 552b of Title 5, United States Code, subsection (c), subparagraph (1).

Any member of the public that wishes to attend this meeting or provide input to the Air Force Scientific Advisory Board must contact the Scientific Advisory Board meeting organizer at the phone number or email address listed in this announcement at least five working days prior to the meeting date. Please ensure that you submit your written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act. Statements being submitted in response to the agenda mentioned in this notice must be received by the Scientific Advisory Board meeting organizer at least five calendar days prior to the meeting commencement date. The Scientific Advisory Board meeting organizer will review all timely submissions and respond to them prior to the start of the meeting identified in this notice. Written statements received after this date may not be considered by the Scientific Advisory Board until the next scheduled meeting.

**FOR FURTHER INFORMATION CONTACT:** The Scientific Advisory Board meeting organizer, Lt Col Mike Rigoni at [michael.j.rigoni@mail.mil](mailto:michael.j.rigoni@mail.mil) or 703–695–4297, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

**Henry Williams,**

*Acting Air Force Federal Register Officer.*

[FR Doc. 2017–25555 Filed 11–24–17; 8:45 am]

**BILLING CODE 5001–10–P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**[Docket DARS–2017–0018; OMB Control Number 0704–0525]**

**Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 225 and 252 Provision on Prohibition of Foreign Commercial Satellite Services From Certain Foreign Entities-Representations**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through January 31, 2018. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

**DATES:** DoD will consider all comments received by January 26, 2018.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0525, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704–0525 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Instructions:* Search for “Docket Number: DARS–2017–0018.” Select “Comment Now” and follow the instructions provided to submit a comment. All submissions received must include the agency name and docket number for this notice. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://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. Amy Williams, 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 225 and 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities-Representations; OMB Control Number 0704–0525.

*Needs and Uses:* Defense Federal Acquisition Regulation Supplement (DFARS) provision 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, is used by contracting officers to determine whether the offeror is subject to the statutory prohibition on award of contracts for commercial satellite services to certain foreign entities.

*Type of Collection:* Revision of a currently approved collection.

*Obligation to Respond:* Required to obtain or retain benefits.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Number of Respondents:* 256.

*Responses per Respondent:* 1.

*Annual Responses:* 256.

*Average Burden per Response:* .25 hours.

*Annual Burden Hours:* 64.

*Frequency:* On Occasion.

**Summary of Information Collection**

The provision is included in solicitations for the acquisition of foreign commercial satellite services and requires the offeror to represent whether it is or is not a foreign entity subject to the prohibitions of the statute, or is or is not offering foreign commercial satellite services provided by such a foreign entity. If the offeror

responds affirmatively to any of the representations, then the offeror must provide further information.

**Jennifer L. Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

[FR Doc. 2017-25560 Filed 11-24-17; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0097]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State and Local Educational Agency Record and Reporting Requirements Under Part B of the Individuals With Disabilities Education Act

**AGENCY:** Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS).

**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 December 27, 2017.

**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-2017-ICCD-0097. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216-32, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Rebecca Walawender, 202-245-7399.

**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:* State and Local Educational Agency Record and Reporting Requirements Under Part B of the Individuals with Disabilities Education Act.

*OMB Control Number:* 1820-0600.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 73,503.

*Total Estimated Number of Annual Burden Hours:* 347,449.

*Abstract:* OMB Information Collection 1820-0600 reflects the provisions in the Act and the Part B regulations requiring States and/or local educational agencies (LEAs) to collect and maintain information or data and, in some cases, report information or data to other public agencies or to the public. However, such information or data are not reported to the Secretary. Data are collected in the areas of private schools, parentally placed private school students, State high cost fund, notification of free and low cost legal services, early intervening services, notification of hearing officers and mediators, State complaint procedures, and the LEA application under Part B.

Dated: November 22, 2017.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017-25702 Filed 11-24-17; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0100]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual State Application Under Part B of the Individuals With Disabilities Education Act

**AGENCY:** Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS).

**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 December 27, 2017.

**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-2017-ICCD-0100. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216-32, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Rebecca Walawender, 202-245-7399.

**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:* Annual State Application Under Part B of the Individuals with Disabilities Education Act.

*OMB Control Number:* 1820-0030.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 60.

*Total Estimated Number of Annual Burden Hours:* 840.

*Abstract:* The Individuals with Disabilities Education Act, signed on December 3, 2004, became Public Law 108-446. In accordance with 20 U.S.C. 1412(a) a State is eligible for assistance under Part B for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the conditions found in 20 U.S.C. 1412.

Dated: November 22, 2017.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017-25705 Filed 11-24-17; 8:45 am]

**BILLING CODE 4000-01-P**

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## DEPARTMENT OF ENERGY

### Public Availability of Department of Energy FY 2016 Service Contract Inventory

**AGENCY:** Department of Energy.

**ACTION:** Notice of public availability of FY 2016 Service Contract inventories.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111-117), the Department of Energy (DOE) is publishing this notice to advise the public on the availability of the FY 2016 Service Contract inventory. This inventory provides information on service contract actions over \$25,000 that DOE completed in FY 2016. The inventory has been developed in accordance with guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP).

FY 2016 government-wide service contract inventory can be found at <https://www.acquisition.gov/service-contract-inventory>. The Department of Energy's service contract inventory data is included in the government-wide inventory posted on the above link and the government-wide inventory can be filtered to display the inventory data for the Department.

DOE has posted its FY 2015 Analysis and the FY 2016 Analysis Plan at: <http://energy.gov/management/downloads/service-contract-inventory>.

**FOR FURTHER INFORMATION CONTACT:**

Questions regarding the service contract inventory should be directed to Jeff Davis in the Strategic Programs Division at 202-287-1877 or [jeff.davis@hq.doe.gov](mailto:jeff.davis@hq.doe.gov).

Dated: October 5, 2017.

**John R. Bashista,**

*Director, Office of Acquisition Management.*

[FR Doc. 2017-25511 Filed 11-24-17; 8:45 am]

**BILLING CODE 6450-01-P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. DI17-12-000]

#### Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene; Ram Valley, LLC

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI17-12-000.

c. *Date Filed:* September 22, 2017.

d. *Applicant:* Ram Valley, LLC.

e. *Name of Project:* Juniper Creek Hydroelectric Project.

f. *Location:* The proposed Juniper Creek Hydroelectric Project would be

located near the Town of Eagle River, in the Municipality of Anchorage, Alaska.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2012).

h. *Applicant Contact:* David Brailey, managing member, Ram Valley LLC, 3527 North Point Drive, Anchorage, AK 99502, telephone: (907) 248-0058; email: [dbrailey@alaska.net](mailto:dbrailey@alaska.net); Agent Contact: David Brailey, owner, Brailey Hydrologic, 3527 North Point Drive, Anchorage, AK 99502, telephone: (907) 248-0058

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502-6437, or email: [Jennifer.Polardino@ferc.gov](mailto:Jennifer.Polardino@ferc.gov).

j. *Deadline for filing comments, protests, and motions to intervene is:* 30 days from the issuance date of this notice by the Commission. This supersedes the due date of the October 4, 2017 public notice issued for this proceeding.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene 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](mailto: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 DI17-12-000.

k. *Description of Project:* The proposed run-of-river Juniper Creek Hydroelectric Project would consist of: (1) A low-head diversion structure on Juniper Creek; (2) a 16-inch-diameter, 1,125-foot-long buried penstock; (3) a 20-foot-wide, 20-foot-long powerhouse containing a 320-kilowatt generating unit; (4) a 40-foot-long tailrace returning water to Juniper Creek; (5) a 1,700-foot-long, 13.8-kilovolt underground transmission line; (6) access trails; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable

waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. 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](mailto: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 and in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371.

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, 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 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 Responsive Documents:* All filings must bear in all capital letters the title COMMENTS, PROTESTS, and MOTIONS TO INTERVENE, as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 20, 2017.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2017-25483 Filed 11-24-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Order on Intent To Revoke Market-Based Rate Authority

*Before Commissioners:* Neil Chatterjee, Chairman; Cheryl A. LaFleur, and Robert F. Powelson.

	Docket Nos.
Electric Quarterly Reports	ER02-2001-020
Niagara Generation, LLC	ER10-3154-000
C2K Energy, LLC .....	ER14-1751-001
RDAF Energy Solutions, LLC.	ER16-895-002
Castlebridge Energy Group LLC.	ER11-4629-000
Intercom Energy, Inc. ....	ER11-125-000
Chesapeake Renewable Energy LLC.	ER13-28-001
EmpireCo Limited Partnership.	ER11-2882-001

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2012), and 18 CFR part 35 (2017), require, among other things, that all rates, terms, and conditions for jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports.<sup>1</sup>

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports summarizing contractual and transaction information related to their

market-based power sales as a condition for retaining that authorization.<sup>2</sup> Commission staff's review of the Electric Quarterly Reports indicates that the following seven public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: Niagara Generation, LLC, C2K Energy, LLC, RDAF Energy Solutions, LLC, Castlebridge Energy Group LLC, Intercom Energy, Inc., Chesapeake Renewable Energy LLC, and EmpireCo Limited Partnership. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.<sup>3</sup>

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.<sup>4</sup>

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of market-based rate

<sup>1</sup> Revised Public Utility Filing Requirements, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). See also *Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280, *order on reh'g and clarification*, 157 FERC ¶ 61,180 (2016) (clarifying Electric Quarterly Reports reporting requirements and updating Data Dictionary).

<sup>2</sup> See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 3, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>3</sup> Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 222.

<sup>4</sup> *Id.* P 223.

sellers that failed to submit their Electric Quarterly Reports.<sup>5</sup>

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768,<sup>6</sup> and 770.<sup>7</sup> The exact filing dates for Electric Quarterly Reports are prescribed in 18 CFR 35.10b (2017). As noted above, Commission staff's review of the Electric Quarterly Reports for the period up to the second quarter of 2017 identified seven public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

*The Commission orders:*

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The

Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: November 20, 2017.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2017-25485 Filed 11-24-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL18-31-000]

#### Notice of Complaint; Clear River Energy Center LLC v. ISO New England Inc., New England Power Company, New England Participating Transmission Owners

Take notice that on November 17, 2017, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Clear River Energy Center LLC, (Complainant) filed a formal complaint against ISO New England Inc. (ISO-NE), New England Power Company, New England Participating Transmission Owners (collectively, Respondents) alleging that ISO-NE's Transmission, Markets and Services Tariff is unjust and unreasonable, anticompetitive and unduly discriminatory, all as more fully explained in the complaint.

Complainants certifies that a copy of the complaint was served on respondents.

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 Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to

intervene, and protests must be served on the Complainant.

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 review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on December 7, 2017.

Dated: November 20, 2017.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2017-25484 Filed 11-24-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP18-13-000]

#### Notice of Application; Columbia Gas Transmission, LLC

Take notice that on November 3, 2017, Columbia Gas Transmission, LLC (Columbia Gas), 700 Louisiana Street, Suite 700, Houston, Texas 77002-2700, filed in Docket No. CP18-13-000, an application under sections 7(b) and 7(c) of the Natural Gas Act for the proposed Line 8000 Replacement Project (Project). Specifically, Columbia Gas requests authorization to: (i) Replace approximately 14 miles of bare steel pipeline; and (ii) abandon multiple taps, all located in Mineral County, West Virginia and Allegany County, Maryland, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The project costs approximately \$18.2 million and Columbia Gas requests pre-determination of rolled-in rate treatment and surcharges. The Project is part of Columbia Gas's multi-year, comprehensive modernization program to address its aging infrastructure. This

<sup>5</sup> See, e.g., *Electric Quarterly Reports*, 80 FR 58,243 (Sep. 28, 2015); *Electric Quarterly Reports*, 79 FR 65,651 (Nov. 5, 2014).

<sup>6</sup> *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>7</sup> *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338 (2012).

filing may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886)208-3676 or TYY, (202) 502-8659.

Any questions regarding this Application should be directed counsel for Columbia, Lauri Newton, Director of Regulatory and Commercial Law, TransCanada Corporation, 700 Louisiana St, Houston, TX 77002; Telephone: (832) 320-5177.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments

considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the e-Filing link.

*Comment Date:* 5:00 p.m. Eastern Time on December 8, 2017.

Dated: November 17, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017-25486 Filed 11-24-17; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[9970-26-OE1]

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Tennessee

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of the State of Tennessee's request to revise its EPA Administered Permit Programs: The National Pollutant Discharge Elimination System EPA-authorized program to allow electronic reporting.

**DATES:** EPA approves the State of Tennessee's authorized program revision as of November 27, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566-1175, [seeh.karen@epa.gov](mailto:seeh.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application

and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 17, 2017, the Tennessee Department of Environment and Conservation (TDEC) submitted an application titled "Construction Stormwater System" for revision to its EPA-approved program under title 40 CFR to allow new electronic reporting. EPA reviewed TDEC's request to revise its EPA-authorized Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision/modification set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Tennessee's request to revise its Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program to allow electronic reporting under 40 CFR part 122 and 125 is being published in the **Federal Register**.

TDEC was notified of EPA's determination to approve its application with respect to the authorized program listed above.

**Matthew Leopard,**

*Director, Office of Information Management.*

[FR Doc. 2017-25572 Filed 11-24-17; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0007; FRL-9968-48]

### Pesticide Product Registration; Receipt of Applications for New Active Ingredients

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

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before December 27, 2017.

**ADDRESSES:** Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as show in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov); or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305-7090; email address: [RDFFRNotices@epa.gov](mailto:RDFFRNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

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

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

###### B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark

the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

## III. New Active Ingredients

1. **File symbol:** 279-GAGR and 279-GAGN. **Docket ID number:** EPA-HQ-OPP-2017-0417. **Applicant:** FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. **Product names:** Valifenalate Technical and F9177-2 WG. **Active ingredient:** Fungicide and Valifenalate at 98.4% (Valifenalate Technical) and 10% (F9177-2 WG). **Proposed use:** Classification/Use Bulb vegetable crop group 3-07, cucurbit vegetable crop group 9, fruiting vegetable crop group 8, celery, and potatoes. **Contact:** RD.

2. **File Symbol:** 87645-G. **Docket ID number:** EPA-HQ-OPP-2017-0461. **Applicant:** Envera, LLC, 220 Garfield Ave., West Chester, PA 19380. **Product name:** ENV503 Biofungicide MUP. **Active ingredient:** Fungicide and Bactericide—*Bacillus amyloliquefaciens* strain ENV503 at 1.30%. **Proposed use:** Manufacturing use. **Contact:** BPPD.

3. **File Symbol:** 87645-U. **Docket ID number:** EPA-HQ-OPP-2017-0461. **Applicant:** Envera, LLC, 220 Garfield Ave., West Chester, PA 19380. **Product name:** ENV503 Biofungicide Wettable Powder. **Active ingredient:** Fungicide and Bactericide—*Bacillus amyloliquefaciens* strain ENV503 at 0.15%. **Proposed use:** Broad-spectrum,

preventative biofungicide for control or suppression of fungal and bacterial plant diseases in agricultural, field, nursery, and forested areas and as a seed treatment. *Contact:* BPPD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: October 2, 2017.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2017-25566 Filed 11-24-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0006; FRL-9968-55]

### Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before December 27, 2017.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P),

main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov), Michael Goodis, Registration Division (7505P), main telephone number: (703) 305-7090; email address: [RDFFRNotices@epa.gov](mailto:RDFFRNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

###### B. What should I consider as I prepare my comments for EPA?

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

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

##### II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

#### IV. New Tolerances for Non-Inerts

1. *PP 7F8557*. (EPA-HQ-OPP-2017-0429). E. I. Du Pont De Nemours and Company, Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide picoxystrobin in or on alfalfa, forage at 4 parts per million (ppm); alfalfa, hay at 5 ppm; alfalfa, seed at 9 ppm; almond hulls at 15 ppm; cotton, gin by-products at 40 ppm; cottonseed (Crop Subgroup 20C) at 4 ppm; grass, forage (Grown for Seed) at 40 ppm; grass, hay (Grown for Seed) at 80 ppm; head lettuce at 7 ppm; onion, bulb (Crop Subgroup 3-07A) at 0.8 ppm; onion, green (Crop Subgroup 3-07B) at 15; pea and bean, succulent shelled (Crop Subgroup 6B) at 3 ppm; peanut at 0.1 ppm; peanut, hay at 40 ppm; sunflower (Crop Subgroup 20B) at 3 ppm; tree nut except hulls (Crop Group 14-12) at 0.15 ppm; vegetable, brassica head and stem (Crop Group 5-16) at 5 ppm; vegetable, cucurbit (Crop Group 9) at 0.7 ppm; vegetable, fruiting (Crop Group 8-10) at 1.5 ppm; vegetable, leaf petiole (Crop Subgroup 22B) at 40 ppm; vegetable, leafy except head lettuce (Crop Group 4-16) at 60 ppm; vegetable, leaves of root and tuber (Crop Group 2) at 40 ppm; vegetable, legume, edible podded (Crop Subgroup 6A) at 4 ppm; vegetable, root (Crop Subgroup 1A) at 0.6 ppm; and vegetable, tuberous and corm (Crop Subgroup 1C) at 0.06 ppm. The LC/MS/MS is used to measure and evaluate the chemical picoxystrobin. *Contact*: RD.

2. *PP 7F8582*. (EPA-HQ-OPP-2017-0417). FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 requests to establish a tolerance in 40 CFR 180 for residues of the fungicide, valifenalate, in or on the raw agricultural commodities: Bulb vegetable crop group 3-07 at 0.40 ppm; celery at 6.0 ppm; cucurbit crop group 9 at 0.3 ppm; fruiting vegetable crop group 8 at 0.60 ppm; grape at 3.0 ppm; potato at 0.04 ppm; potato-chips at 0.05 ppm; potato-dried pulp at 0.06 ppm; potato-granules/flakes at 0.15 ppm; and tomato-wet peel at 1.8 ppm. The LC/MS/MS method is used to measure and evaluate the chemical valifenalate (beta-Alanine, N-[(1-methylethoxy)carbonyl]-L-valyl-3-(4-chlorophenyl)-, methyl ester). *Contact*: RD.

3. *PP7E8601*. (EPA-HQ-OPP-2017-0494). Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish import tolerances in 40 CFR part 180 for residues of the insecticide methoxyfenozide [3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide] in or on tea, dried, and tea,

instant at 20 ppm. Liquid chromatography with tandem mass spectrometry detection is used to measure and evaluate the residues of methoxyfenozide. *Contact*: RD.

**Authority**: 21 U.S.C. 346a.

Dated: October 2, 2017.

**Delores Barber**,

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2017-25564 Filed 11-24-17; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[9970-09-OEI]

#### Cross-Media Electronic Reporting: Authorized Program Revision Approval, Commonwealth of Kentucky

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

**ACTION**: Notice.

**SUMMARY**: This notice announces EPA's approval of the Commonwealth of Kentucky's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

**DATES**: EPA approves the authorized program revision for the Commonwealth of Kentucky's National Primary Drinking Water Regulations Implementation program as of December 27, 2017 if no timely request for a public hearing is received and accepted by the Agency.

**FOR FURTHER INFORMATION CONTACT**:

Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566-1175, [seeh.karen@epa.gov](mailto:seeh.karen@epa.gov).

**SUPPLEMENTARY INFORMATION**: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such

approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 9, 2017, the Kentucky Department for Environmental Protection (KY DEP) submitted an application titled "Compliance Monitoring Data Portal" for revision to its EPA-approved drinking water program under title 40 CFR to allow new electronic reporting. EPA reviewed KY DEP's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Kentucky's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

KY DEP was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the Commonwealth of Kentucky's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the

requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the Commonwealth of Kentucky's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to GROMERR section 3.1000(f)(4).

**Matthew Leopard,**

*Director, Office of Information Management.*

[FR Doc. 2017-25571 Filed 11-24-17; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0716]

### 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 (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 comments should be submitted on or before January 26, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501-3520), the FCC 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.

*OMB Control Number:* 3060-0716.

*Title:* Sections 73.88, 73.318 and 73.685, Blanketing Interference.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and Not-for-profit institutions.

*Number of Respondents and Responses:* 21,000 respondents; 21,000 responses.

*Estimated Time per Response:* 1 to 2 hours.

*Frequency of Response:* Third party disclosure requirement.

*Total Annual Burden:* 41,000 hours.

*Total Annual Cost:* None.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The information collection requirements approved under this collection are contained under the following rule sections:

47 CFR 73.88 states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour.

47 CFR 73.318(b) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88, and 73.685(d), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2017-25460 Filed 11-24-17; 8:45 am]

**BILLING CODE 6712-01-P**



## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1139]

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission 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 comments should be submitted on or before December 27, 2017. 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 contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov); and to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole

Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–1139.

*Title:* FCC Consumer Broadband Services Testing and Measurement.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit and individuals or households.

*Number of Respondents and Responses:* 501,020 respondents and 501,020 responses.

*Estimated Time per Response:* 1 hour–200 hours.

*Frequency of Response:* Biennial reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Voluntary. Statutory authority for this information collection is contained in the Broadband

Data Improvement Act of 2008, Public Law 110–385, Stat 4096, 103(c)(1).

*Total Annual Burden:* 46,667 hours.

*Total Annual Costs:* No Cost.

*Nature and Extent of Confidentiality:*

All participation in the Measuring Broadband America Program is voluntary and any participant can decline to participate at any time. No volunteers' personally identifying information (PII) such as name, phone number, or street addresses will be transmitted to the Commission from the contractor as a matter of vendor policy and agency privacy policy. SamKnows maintains a series of administrative, technical, and physical safeguards to protect against the transmission of PII. At point of registration, individuals will be given full disclosure in a “privacy statement” highlighting what information will be collected. Fixed Broadband ISP Partners receive PII about volunteers to confirm the validity of the information against their subscription records, but will be bound by a non-disclosure agreement that will maintain various administrative, technical and physical safeguards to protect the information and limit its use. Mobile Broadband ISP Partners have access to five kinds of information, including location and time of data collection, device type and operating system version, cellular performance and characteristics, and download, upload speed and other broadband performance, also restricted by a non-disclosure agreement that will maintain various administrative, technical and physical safeguards to protect the information and limit its use. ISP Partners providing support to the testing program will likewise be bound to the same series of administrative, technical and physical safeguards developed by SamKnows. In addition all third parties supporting the program directly will be bound by a “Code of Conduct” to ensure all participate and act in good faith and with other legally enforceable documents such as non-disclosure agreements.

*Privacy Act Impact Assessment:* This information collection effects individuals or households. However, personally identifiable information (PII) such as name, phone number, or street addresses is not being collected by, made available to or made accessible by the Commission but instead by third parties including SamKnows, a third party contractor, and Internet Service Provider (ISP) Partners.

*Needs and Uses:* The Commission will submit this expiring collection after this 60-day comment period to the Office of Management and Budget

(OMB) to obtain the full three-year clearance.

This study's collection of information on actual speeds and performance of fixed and mobile broadband connections delivered to consumers by ISPs has been reported to be of great value to academic researchers, manufacturers and technology providers, broadband providers, public interest groups and other diverse stakeholders. Validation of fixed broadband subscribed speeds as opposed to actual speeds by participating ISPs remains unique to this program and provides a context for measured speeds. Mobile broadband performance information is measured using the FCC Speed Test app for Android and iPhone devices to test the upload and download speed, latency and packet loss, as well as the wireless performance characteristics of the broadband connection and the kind of handsets and versions of operating systems tested. Information the FCC Speed Test App ("Application") collects is limited to information used to measure volunteers' mobile broadband service and no personally identifiable information, such as subscribers' name, phone number or unique identifiers associated with a device is collected. Software-based tools and online tools exist that can test consumer's broadband connections, including a set of consumer tools launched by the FCC in conjunction with the National Broadband Plan. However, these tools track speeds experienced by consumers, rather than speeds delivered directly to a consumer by an ISP. The distinction is important for supporting Agency broadband policy analysis, as ISPs advertise speeds and performance delivered rather than speeds experienced, which suffers from degradation outside of an ISP's control.

No other dedicated panel of direct fixed and mobile broadband performance measurement using publicly documented methodologies using free and add-free technologies exists today in the country. The program will continue to support existing software-based tools and online tools but the focus of the program will remain the direct measurement of broadband performance delivered to the consumer. The collection effort also has specific elements focused on further network performance statistics, time of day parameters, and other elements affecting consumers' broadband experience that are not tracked elsewhere. The information to be confirmed by ISP Partners about their subscribers or technical and market data regarding the

broadband services they provide is unavailable from other sources.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2017-25459 Filed 11-24-17; 8:45 am]

**BILLING CODE 6712-01-P**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of Intent To Terminate the Receivership of 10399, The RiverBank, Wyoming, Minnesota

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for The RiverBank, Wyoming, Minnesota, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of The RiverBank on October 7, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 21, 2017.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2017-25503 Filed 11-24-17; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of Intent To Terminate the Receivership of 10176, Columbia River Bank, The Dalles, Oregon

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for Columbia River Bank, The Dalles, Oregon, intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Columbia River Bank on January 22, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 21, 2017.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2017-25502 Filed 11-24-17; 8:45 am]

**BILLING CODE 6714-01-P**

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## FEDERAL RESERVE SYSTEM

### Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Application for Exemption from Prohibited Service at Savings and Loan Holding Companies (FR LL-12, OMB No. 7100-0338).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report**

*Report title:* Application for Exemption from Prohibited Service at Savings and Loan Holding Companies.

*Agency form number:* FR LL-12.

*OMB control number:* 7100-0338.

*Frequency:* On occasion.

*Respondents:* Individuals and savings and loan holding companies.

*Estimated number of respondents:* 15.

*Estimated average hours per response:* 16.

*Estimated annual burden hours:* 240.

*General description of report:* The Federal Deposit Insurance (FDI) Act and Regulation LL (12 CFR part 238) prohibit individuals who have been convicted of certain criminal offenses or who have agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such criminal offenses from participating in the affairs of a savings and loan holding

company (SLHC) or any of its subsidiaries without the written consent of the Board. In order for such a person to participate in the conduct of the affairs of any SLHC, the SLHC or the individual must file an application seeking to obtain an exemption from the Board. The Board will use any information provided by the applicant when considering an exemption request concerning a prohibited person. Such considerations will include, but are not limited to, whether the prohibited person would participate in the major policymaking functions of the SLHC or would threaten the safety and soundness of any subsidiary insured depository institution of the SLHC or the public confidence in the insured depository institution.

*Legal authorization and confidentiality:* The Board has determined that this information collection is authorized by section 19(e)(2) of the FDI Act, which states that the "Board . . . may provide exemptions [from the prohibition] by regulation or order . . . if the exemption is consistent with the purposes of this subsection" (12 U.S.C. 1829(e)(2)). The Board exercises general supervision over SLHCs, which includes examination authority and the imposition of reporting and recordkeeping requirements (12 U.S.C. 1467a(b)(2)). This information collection is required in order for prohibited persons to obtain the benefit of becoming, or continuing service as, an institution-affiliated party of an SLHC, and for an SLHC to permit that prohibited person to engage in any conduct or continue any relationship prohibited by section 19(e) of the FDI Act.

Some or all of the information submitted may be withheld pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(8)). The applicability of these exemptions would need to be determined on a case-by-case basis.

*Current actions:* On July 24, 2017, the Board published a notice in the **Federal Register** (82 FR 34311) requesting public comment for 60 days on the extension, without revision, of the Application for Exemption from Prohibited Service at Savings and Loan Holding Companies. The comment period for this notice expired on September 22, 2017. The Board did not receive any comments. The extension will be implemented as proposed.

Board of Governors of the Federal Reserve System, November 21, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017-25498 Filed 11-24-17; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H (Reg H-3; OMB No. 7100-0196).

**DATES:** Comments must be submitted on or before January 26, 2018.

**ADDRESSES:** You may submit comments, identified by *Reg H-3*, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include OMB number in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons.

Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

#### **Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal prior to giving final approval.

#### **Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report**

*Report title:* Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.

*Agency form number:* Reg H-3.

*OMB control number:* 7100-0196.

*Frequency:* Event-generated.

*Respondents:* State member banks.

*Estimated number of respondents:* State member banks (de novo): 1; state member banks *with* trust departments: 228; state member banks *without* trust departments: 601.

*Estimated average hours per response:* State member banks (de novo): recordkeeping, 40 hours. State member banks *with* trust departments: recordkeeping, 2 hours; disclosure, 16 hours. State member banks *without* trust departments: recordkeeping, 15 minutes; disclosure, 5 hours.

*Estimated annual burden hours:* State member banks (de novo): recordkeeping, 40 hours. State member banks *with* trust departments: recordkeeping, 12,768 hours; disclosure, 43,776 hours. State member banks *without* trust departments: recordkeeping, 4,207 hours; disclosure, 36,060 hours.

*General description of report:* These recordkeeping and disclosure requirements are pursuant to Sections 208.34(c), (d), and (g) of the Board's Regulation H, which require that state member banks effecting securities transactions for customers establish and maintain a system of records of these transactions, furnish confirmations of transactions to customers that disclose certain information, and establish written policies and procedures relating to securities trading. State member banks are required to maintain records created per these requirements for three years following a securities transaction. These requirements are necessary to protect the customer, to avoid or settle customer disputes, and to protect the institution against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934 ("Securities Exchange Act").

*Legal authorization and confidentiality:* The Board has determined that the Regulation H requirements are authorized by Section 23 of the Securities Exchange Act, 15 U.S.C. 78w, which empowers the Board to make rules and regulations implementing those portions of the Securities Exchange Act for which it is responsible. The requirements of 12 CFR 208.34(c), (d), and (g) also are impliedly authorized by Section 9 of the Federal Reserve Act (12 U.S.C. 321-328a), which establishes the Board's supervisory authority with respect to the safety and soundness of state member banks. Accordingly, the Board is authorized to impose these recordkeeping, disclosure, and policy establishment requirements. The obligation of a state member bank to comply with the Regulation H requirements is mandatory, save for the limited exceptions set forth in 12 CFR 208.34(a).

Inasmuch as the Board does not collect or receive any information concerning securities transactions pursuant to these requirements, no issues of confidentiality normally will arise. If, however, these records were to come into the possession of the Board, they may be protected from disclosure pursuant to exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(b)(4), under the standards set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), to the extent an institution can establish the potential for substantial competitive harm. They also may be subject to withholding under FOIA exemption 6, 5 U.S.C. 552(b)(6), should disclosure constitute an unwarranted invasion of personal privacy.

Additionally, if such information were included in the work papers of System examiners or abstracted in System reports of examination, the information also may be protected under exemption 8 of FOIA, 5 U.S.C. 552(b)(8). Any withholding determination would be made on a case-by-case basis in response to a specific request for disclosure of the information.

Board of Governors of the Federal Reserve System, November 21, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017-25499 Filed 11-24-17; 8:45 am]

**BILLING CODE 6210-01-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000–0153; Docket 2017–0053; Sequence 17]

**Information Collection; OMB Circular  
A–119**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Correction.

**SUMMARY:** This document contains a correction to the information collection notice that was published in the **Federal Register** at 82 FR 51256, on November 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, Acquisition Policy Division, GSA, 202–208–4949, or email [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).

**SUPPLEMENTARY INFORMATION:***Correction*

In the information collection document appearing at 82 FR 51256, on November 3, 2017, on page 51256, second column, paragraph 1, lines 1 through 7 are corrected to replace the reference to an outdated version of Office of Management and Budget (OMB) Circular A–119. The 1998 version was superseded in 2016.

The current version may be found on Standards.gov: [https://www.nist.gov/sites/default/files/revise/circular\\_a-119\\_as\\_of\\_01-22-2016.pdf](https://www.nist.gov/sites/default/files/revise/circular_a-119_as_of_01-22-2016.pdf).

Dated: November 21, 2017.

**Lorin S. Curit,**

*Director, Federal Acquisition Policy Division,  
Office of Government-wide Acquisition  
Policy, Office of Acquisition Policy, Office  
of Government-wide Policy.*

[FR Doc. 2017–25553 Filed 11–24–17; 8:45 am]

**BILLING CODE 6820–EP–P**

**GENERAL SERVICES  
ADMINISTRATION**

[OMB Control No. 3090–0300; Docket No. 2017–0001; Sequence 9]

**Submission for OMB Review; General  
Services Administration Acquisition  
Regulation; Implementation of  
Information Technology Security  
Provision**

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB information collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding Implementation of Information Technology Security Provision. A notice was published in the **Federal Register** at 82 FR 43021 on September 13, 2017. No comments were received.

**DATES:** Submit comments on or before December 27, 2017.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0300. Select the link “Comment Now” that corresponds with “Information Collection 3090–0300, Implementation of Information Technology Security Provision”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “Information Collection 3090–0300, Implementation of Information Technology Security Provision” on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0300.

*Instructions:* Please submit comments only and cite Information Collection 3090–0300, Implementation of Information Technology Security Provision, in all correspondence related to this collection. 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](http://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:** Mr. Kevin Funk, Program Analyst, Office of Acquisition Policy, at 202–357–5805 or via email at [kevin.funk@gsa.gov](mailto:kevin.funk@gsa.gov).

**SUPPLEMENTARY INFORMATION:****A. Purpose**

Clause 552.239–71 requires contractors, within 30 days after contract award, to submit an IT Security Plan to the Contracting Officer and Contracting Officer’s Representative that describes the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under the contract. The clause will also require that contractors submit written proof of IT security authorization six months after contract award, and verify that the IT Security Plan remains valid annually.

**B. Annual Reporting Burden**

*Respondents:* 160.

*Responses per Respondent:* 2.

*Total Annual Responses:* 320.

*Hours per Response:* 5.

*Total Burden Hours:* 1600.

**C. Public Comments**

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

*Obtaining Copies of Proposals:* Requesters 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. 3090–0300, Implementation of Information Technology Security Provision, in all correspondence.

**Jeffrey A. Koses,**

*Director, Office of Acquisition Policy, Office  
of Government-wide Policy.*

[FR Doc. 2017–25500 Filed 11–24–17; 8:45 am]

**BILLING CODE 6820–61–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-17-0544]

#### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *Evaluation of Effectiveness of NIOSH Publications: NIOSH Customer Satisfaction and Impact Survey* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on September 19, 2016 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW.,

Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

#### Proposed Project

Evaluation of Effectiveness of NIOSH Publications: NIOSH Customer Satisfaction and Impact (CSI) Survey (OMB Control Number 0920-0544, Expiration Date 4/30/2010)—Reinstatement with Changes—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91-596), the mission of the National Institute for Occupational Safety and Health (NIOSH) is to conduct research and investigations on work-related disease and injury and to disseminate information for preventing identified workplace hazards (Sections 20 (a)(1) and (d)). NIOSH is proposing a Reinstatement with Changes to continue a two-year study to collect stakeholder feedback on the effectiveness of its products and their dissemination. This dual responsibility of NIOSH's mission recognizes the need to translate research into workplace application if it is to impact worker safety and well-being. NIOSH, through its communication efforts, seeks to promote greater awareness of occupational hazards and their control, influence public policy and regulatory action, shape national research priorities, change organizational practices and individual behavior, and ultimately, improve American working life. NIOSH's primary communication vehicle is its series of numbered publications catalogued by the Institute as Policy Documents, Technical Documents, and Educational Documents.

The aforementioned types of documents are available to the public through the use of mailing lists, NIOSH eNews, the NIOSH Web site, promotion at conferences, and by other means. In FY 2015, combined digital downloads and hard copy distributions of NIOSH publications registered at over 790,000. Yet, these numbers tell little of whether the reports are reaching all of the appropriate audiences, or whether the information is perceived as credible and useful by the recipients. Therefore, a Customer Satisfaction Survey (CSS) was conducted in 2003 and a follow-up CSS in 2010 to assess customer satisfaction and perceived impact of NIOSH publications. The proposed survey seeks to update the data collected for the 2010 survey (OMB Control Number 0920-0544, expiration date 4/30/10) and

gather data on outreach initiatives NIOSH has undertaken in recent years. The findings from the study completed in 2010 confirmed that NIOSH continues to be a credible source of occupational safety and health information, NIOSH publications were being used more frequently than in previous years, and respondents are relying more on the NIOSH Web site and other electronic resources. However, the 2010 CSS also revealed that the percentage of respondents who looked to NIOSH for Occupational Safety and Health information dropped from 84% in 2003 to 76% in 2009 (2010 survey data collection). Results from the 2010 CSS suggest that NIOSH needs to collaborate more with stakeholder associations to assess the needs of those in the OSH community who are not using NIOSH resources. Since then, NIOSH has established a partner database, which documents the private companies, professional associations, and labor unions listed as partners on various projects. Another recommendation is that NIOSH develop strategies to increase awareness of electronic resources and newsletters and develop a broader range of tools that have direct application and provide clearer guidance on policy.

The currently proposed Customer Satisfaction and Impact (CSI) Survey is a reinstatement of the 2010 study with changes to the instrument and data collection methods to account for new products and technologies that did not exist in 2010. It is an effort by the agency to obtain current estimates of consumer use/benefit from NIOSH communication products as a whole, as well as to determine the adequacy of the agency's circulation/delivery practices in light of changing distribution approaches and technologies. The CSI will account for changes in NIOSH publications, digital product formats, and new dissemination channels emerging since the last collection of survey data. As offered with many NIOSH publications, the CSI will also solicit more audience-based information that reflects the new media environment. Such expansions will yield findings that show how well customer service practices at NIOSH have followed the 2003 and 2010 recommendations, as well as provide insights into how users seek and use NIOSH information in the current digital environment.

NIOSH will direct the survey to members of the following occupational safety and health organizations: American Industrial Hygiene Association (AIHA), American College of Occupational and Environmental

Medicine (ACOEM), American Association of Occupational Health Nurses (AAOHN), American Society of Safety Engineers (ASSE), American Insurance Association (AIA), Insurance Loss Control Association (ILCA) and National Fire Protection Association (NFPA). NIOSH will randomly sample within each of the five following

occupational groups: AIHA, ACOEM, AAOHN, ASSE, and other (includes members of AIA, ILCA, and NFPA). The annual number of respondents is 1500. Each participant will complete one of the four data collection instruments, depending on whether they are identified as an “intermediary” or

“employer” and whether they complete the full or short version.

NIOSH estimates that it will take 312 total burden hours to complete information collections, compared to 205 burden hours estimated for the 2010 CSS. There are no costs to the respondents other than their time.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
AIHA, AAOHN, ACOEM, ASSE, and Other members.	NIOSH Customer Satisfaction Survey—full version, intermediary.	375	1	20/60	125
AIHA, AAOHN, ACOEM, ASSE, and Other members.	NIOSH Customer Satisfaction Survey—short version, intermediary.	375	1	5/60	31
AIHA, AAOHN, ACOEM, ASSE, and Other members.	NIOSH Customer Satisfaction Survey—full version, employer.	375	1	20/60	125
AIHA, AAOHN, ACOEM, ASSE, and Other members.	NIOSH Customer Satisfaction Survey—short version, employer.	375	1	5/60	31

#### Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017-25493 Filed 11-24-17; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-17-0909]

#### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *CDC Diabetes Prevention Recognition Program (DPRP)* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on July 14, 2017 to obtain comments from the public and affected agencies. CDC received and responded to 33 unique public comments that were related to this notice from both individuals and organizations that are outside of CDC. Within those 33 of comments, there were 119 unique questions/comments that CDC answered. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

#### Proposed Project

CDC Diabetes Prevention Recognition Program (DPRP)(OMB Control Number 0920-0909, exp. 12/31/2017)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention.

#### Background and Brief Description

Evidence from efficacy and effectiveness research studies has shown that lifestyle modifications leading to weight loss and increased physical activity can prevent or delay type 2 diabetes in persons with prediabetes or those at high risk of developing type 2. To translate these research findings into practice, Section 399V-3 of Public Law 111-148, directed CDC “to determine eligibility of entities to deliver community-based type 2 diabetes prevention services,” monitor and evaluate the services, and provide technical assistance. To this end, CDC’s Division of Diabetes Translation (DDT) established and administers the DPRP as part of the National Diabetes Prevention Program, which recognizes organizations that deliver type 2 diabetes prevention programs according to requirements set forth in the “Centers for Disease Control and Prevention Recognition Program Standards and Operating Procedures” (Standards).

Currently CDC has 1,363 organizations in its DPRP registry. On July 7, 2016, the Centers for Medicare and Medicaid Services (CMS) proposed the Medicare Diabetes Prevention Program (MDPP). Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh § 424.59)

authorized CDC-recognized organizations to prepare for enrollment as MDPP suppliers in order to bill CMS for these services beginning in 2018; only organizations in good standing with the CDC DPRP are eligible as MDPP suppliers. CDC anticipates an additional 500 organizations per year will apply for recognition.

Previously, in 2011, CDC received OMB approval to collect organizational and de-identified participant information needed to administer the DPRP (OMB No. 0920–0909, expired 11/30/2014). In 2015, CDC renewed

these Standards for three years (OMB No. 0920–0909, expires 12/31/2017) to continue collecting information needed to manage the DPRP. Virtual organizations were added in the 2015 Standards based on new published evidence and to reach a broader audience.

Two levels of CDC recognition have been provided: Pending recognition for new applicants that have submitted an application and meet eligibility criteria defined by the Standards, and Full recognition for programs that have demonstrated effectiveness according to

the Standards. CMS allows for a new recognition status, Preliminary, in addition to Pending and Full. MDPP reimbursement is directly tied to Preliminary and Full statuses. The intent of this current Standards' revision is to align with the CMS MDPP that will be finalized in 2017 and is scheduled to go in effect January 1, 2018, and to account for new evidence in the type 2 diabetes prevention literature. The MDPP benefit will scale type 2 diabetes prevention programs more broadly.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public sector organizations that deliver type 2 diabetes prevention programs.	DPRP Application Form	150	1	1	150
	DPRP Evaluation Data	350	2	2	1,400
Private sector organizations that deliver type 2 diabetes prevention programs.	DPRP Application Form	350	1	1	350
	DPRP Evaluation Data	1,444	2	2	5,776
<b>Total</b> .....	.....	.....	.....	.....	<b>7,676</b>

#### Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–25494 Filed 11–24–17; 8:45 am]

BILLING CODE 4163–18–P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Disease Control and Prevention

[60Day–18–0278; Docket No. CDC–2017–0101]

#### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled the National Hospital Ambulatory

Medical Care Survey (NHAMCS). NHAMCS collects facility and visit information on ambulatory care services utilization in non-Federal, short stay hospitals in the United States.

**DATES:** CDC must receive written comments on or before January 26, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2018–0101 by any of the following methods:

*Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.

- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia

30329; phone: 404–639–7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and



4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB Control Number 0920–0278, Expiration Date 02/28/2018)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on “utilization of health care” in the United States. The National Hospital Ambulatory Medical Care Survey (NHAMCS) has conducted annually since 1992. NCHS is seeking

OMB approval to extend this survey for an additional three years. The target universe of the NHAMCS is in-person visits made to emergency departments (EDs) of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) that have at least six beds for inpatient use, and with a specialty of general (medical or surgical) or children’s general.

NHAMCS was initiated to complement the National Ambulatory Medical Care Survey (NAMCS, OMB Control Number 0920–0234, Expiration Date 03/31/2019), which provides similar data concerning patient visits to physicians’ offices. NAMCS and NHAMCS are the principal sources of data on ambulatory care provided in the United States.

NHAMCS provides a range of baseline data on the characteristics of the users and providers of hospital ambulatory medical care. Data collected include patients’ demographic characteristics, reason(s) for visit, providers’ diagnoses, diagnostic services, medications, and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care system, for the planning of health services, improving medical education,

determining health care work force needs, and assessing the health status of the population.

Starting 2018, CDC will implement the ED component of NHAMCS. However, between December 2017 and May 2018, the 2017 survey will run concurrently with the 2018 survey. This is typical with any data collection cycle: It begin in the last month of the preceding year and ends around the middle of the following year. For the 2017 data collection, CDC will collect information on all three settings (ED, OPD, and ASL). For this three-year request, CDC does not expect substantive changes or supplements for the survey.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and Universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 1,806.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Hospital Chief Executive Officer .....	Hospital Induction 2017 Data Collection.	60	1	75/60	75
Hospital Chief Executive Officer .....	Hospital Induction 2018+ Data Collection.	340	1	75/60	425
Ancillary Service Executive .....	Ambulatory Unit Induction (ED, OPD and ASL).	810	1	15/60	203
Ancillary Service Executive .....	Ambulatory Unit Induction (ED only)	583	1	15/60	146
Medical Record Clerk .....	Retrieving Patient Records (ED, OPD and ASL).	396	144	1/60	950
Ancillary Service Executive—Re- abstraction.	Reabstraction Telephone Call (ED, OPD and ASL).	29	1	5/60	2
Medical Record Clerk—Reabstrac- tion.	Pulling and re-filing Patient Records (ED, OPD and ASL).	29	10	1/60	5
<b>Total .....</b>	.....	.....	.....	.....	<b>1,806</b>

**Leroy A. Richardson,**  
Chief, Information Collection Review Office,  
Office of Scientific Integrity, Office of the  
Associate Director for Science, Office of the  
Director, Centers for Disease Control and  
Prevention.

[FR Doc. 2017–25496 Filed 11–24–17; 8:45 am]

BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day–18–1190]

**Agency Forms Undergoing Paperwork Reduction Act Review**

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information

collection request titled ZEN Colombia Study: Zika in Pregnant Women and Children in Colombia to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on August 30, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

### Proposed Project

ZEN Colombia Study: Zika in Pregnant Women and Children in Colombia (OMB Control Number 0920-1190, expires 07/31/2019)—Revision—National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention (CDC).

### Background and Brief Description

Zika virus (ZIKV) infection is a mosquito-borne flavivirus transmitted by *Aedes* species mosquitoes, and also through sexual and mother-to-child transmission; laboratory-acquired infections have also been reported. Health officials observed sporadic evidence of human ZIKV infection in Africa and Asia prior to 2007, when an outbreak of ZIKV caused an estimated 5,000 infections in the State of Yap, Federated States of Micronesia. Since then, health officials have found evidence of ZIKV in 65 countries and territories, mostly in Central and South

America. Common symptoms of ZIKV in humans include rash, fever, arthralgia, and nonpurulent conjunctivitis. The illness is usually mild and self-limited, with symptoms lasting for several days to a week; however, based on previous outbreaks, some infections are asymptomatic. The prevalence of asymptomatic infection in the current Central and South American epidemic is unknown.

Although the clinical presentation of ZIKV infection is typically mild, ZIKV infection in pregnancy can cause microcephaly and related brain abnormalities when fetuses are exposed in utero. Other adverse pregnancy outcomes related to ZIKV infection remain under study, and include pregnancy loss, other major birth defects, arthrogryposis, eye abnormalities, and neurologic abnormalities.

As the spectrum of adverse health outcomes potentially related to ZIKV infection continues to grow, large gaps remain in our understanding of ZIKV infection in pregnancy. These include the full spectrum of adverse health outcomes in pregnant women, fetuses, and infants associated with ZIKV infection; the relative contributions of sexual transmission and mosquito-borne transmission to occurrence of infections in pregnancy; and variability in the risk of adverse fetal outcomes by gestational week of maternal infection or symptoms of infection. There is an urgency to fill these large gaps in our understanding given the rapidity of the epidemic's spread and the severe health outcomes associated with ZIKV to date.

Colombia's Instituto Nacional de Salud (INS) began surveillance for ZIKV in 2015, reporting the first autochthonous transmission in October 2015 in the north of the country. As of December 2016, Colombia has reported over 106,000-suspected ZIKV cases, with over 19,000 of them among pregnant women. With a causal link established between ZIKV infection in pregnancy and microcephaly, there is an urgent need to understand: How to prevent ZIKV transmission; the full spectrum of adverse maternal, fetal, and infant health outcomes associated with ZIKV infection; and risk factors for occurrence of these outcomes. To answer these questions, INS and the CDC will follow 5,000 women enrolled in the first trimester of pregnancy, their male partners, and their infants, in various cities in Colombia where ZIKV transmission is currently ongoing.

The primary study objectives are to: (1) Describe the sociodemographic and clinical characteristics of the study population; (2) Identify risk factors for

ZIKV infection in pregnant women and their infants. These include behaviors such as use of mosquito-bite prevention measures or condoms, and factors associated with maternal-to-child transmission; (3) Assess the risk for adverse maternal, fetal, and infant outcomes associated with ZIKV infection; (4) Assess modifiers of the risk for adverse outcomes among pregnant women and their infants following ZIKV infection. This includes investigating associations with gestational age at infection, presence of ZIKV symptoms, extended viremia, mode of transmission, prior infections or immunizations, and co-infections.

The project aims to enroll approximately 5,000 women, 1,250 male partners, 4,500 newborns, and a subset of 900 infants/children. Pregnant women will be recruited in the first trimester of pregnancy for study enrollment, followed by assessments during pregnancy (every other week until 32 weeks gestation and monthly thereafter), and within 10 days postpartum. At all visits, participants will complete visit-specific questionnaires. In addition to the questionnaires, at all pregnancy and delivery visits, participants will receive Colombian national recommended clinical care and provide samples for laboratory testing.

Researchers will recruit male partners around the time of the pregnant partners' study enrollment, followed by monthly visits until his pregnant partner reaches the third trimester (approximately 27 weeks gestation). If the male partner contracts ZIKV during this time, visits will occur every other week until the partner has two negative consecutive tests for ZIKV or the pregnancy ends. At all study visits, male partners will complete visit-specific questionnaires and provide samples for laboratory testing.

Researchers will follow all newborns of mothers participating in the study every other week from birth to 6 months of age. At all visits, infants will receive national recommended clinical care (at birth and follow-up visits at 1, 2, 3, and 6 months), provide samples for laboratory testing, and mothers will complete study-specific questionnaires about infant ZIKV symptoms and developmental milestones. During follow-up, infants will also have cranial ultrasounds, their head circumference measured, and hearing and vision tests. For mothers and their infants and as part of clinical care, researchers will abstract relevant information from medical records.

The revised information collection package includes the following changes.

During the data collection period, researchers will follow a subset of 900 infants until 2-years of age. A parent of each of these infants will answer a questionnaire at 6, 9, 12, 18, and 24 months, as well as have other clinical

assessments performed to examine developmental delays. CDC will use study results to guide recommendations made by both INS and CDC to prevent ZIKV infection; to improve counseling of patients about risks to themselves, their pregnancies,

their partners, and their infants; and to help agencies prepare to provide services to affected children and families. Participation in this study is voluntary and there are no costs to participants other than their time. The total burden hours are 14,210.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	
Pregnant Women .....	Pregnant Women Eligibility Questionnaire ....	600	1	5/60	
	Pregnant Women Enrollment Questionnaire	500	1	35/60	
	Adult Symptoms Questionnaire .....	500	15	10/60	
	Pregnant Women Follow-up Questionnaire ...	500	8	15/60	
	Infant Symptoms Questionnaire .....	2,250	14	10/60	
	Parent-Child Eligibility Questionnaire .....	1,000	1	5/60	
	Parent-Child Enrollment Questionnaire .....	900	1	20/60	
	Parent-Child Follow-up Questionnaire .....	900	4	15/60	
	Ages and Stages Questionnaire: 2 and 6 Month Visits.	2,250	2	15/60	
	Ages and Stages Questionnaire: 12 and 24 Month Visits.	900	2	15/60	
	Bayley Scales of Infant and Toddler Development.	900	3	30/60	
	Strengths and Difficulties Questionnaire .....	900	1	5/60	
	Peabody Developmental Motor Scales .....	900	1	30/60	
	Parenting Stress Index IV .....	900	5	10/60	
	Center for Epidemiologic Studies Depression Scale.	900	5	5/60	
	Male partners .....	Test of Nonverbal Intelligence .....	900	1	20/60
		Male Partner Eligibility Questionnaire .....	150	1	5/60
Male Enrollment Questionnaire .....		125	1	25/60	
Adult Symptoms Questionnaire .....		125	7	10/60	

**Leroy A. Richardson,**  
 Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.  
 [FR Doc. 2017-25495 Filed 11-24-17; 8:45 am]  
 BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Personal Responsibility Education Program (PREP) Multi-Component Evaluation Extension.  
*OMB No.:* 0970-0398.

*Description:* The Family and Youth Services Bureau (FYSB) and the Office of Planning, Research, Evaluation (OPRE) in the Administration for Children and Families (ACF) are requesting an extension without change of a currently approved information collection (OMB No. 0970-0398). The purpose of the extension is to complete the ongoing follow-up data collection for the Personal Responsibility Education Program (PREP) Multi-Component Evaluation, which was designed to document how PREP programs are designed and implemented in the field, collect performance measure data for PREP programs, and assess the effectiveness of selected PREP-funded programs.

The PREP Multi-Component Evaluation contains three components: A Design and Implementation Study, a

Performance Analysis Study, and an Impact and In-Depth Implementation Study. Data collection related to the Design and Implementation Study is complete; data collection related to the Performance Analysis Study will be complete in late summer 2017. This notice is specific to data collection activities for the Impact and In-Depth Implementation Study, which is being conducted in four sites. The proposed extension is necessary to complete ongoing follow-up data collection. The resulting data will be used in a rigorous program impact analysis to assess the effectiveness of each program in reducing teen sexual activity and associated risk behaviors.

*Respondents:* Youth participants who agreed to participate in the study upon enrollment in the four impact study sites.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondents	Average burden hours per response	Total/annual burden hours
Second follow-up survey .....	325	1	.75	244

*Estimated Total/Annual Burden Hours:* 244.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV), Attn:

Desk Officer for the Administration for Children and Families.

**Mary Jones**,  
*ACF/OPRE Certifying Officer.*  
[FR Doc. 2017-25444 Filed 11-24-17; 8:45 am]  
**BILLING CODE 4184-37-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket Nos. **FDA-2010-N-0601, FDA-2010-N-0598, FDA-2010-N-0600, FDA-2007-N-0037, FDA-2010-N-0597, FDA-2011-N-0017, and FDA-2016-N-2496**]

**Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals**

**AGENCY:** Food and Drug Administration, HHS.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of information collections that have

been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in Table 1. Copies of the supporting statements for the information collections are available on the internet at <https://www.reginfo.gov/public/do/PRAMain>. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Current Good Manufacturing Practice for Medicated Feeds .....	0910-0152	8/31/2020
Current Good Manufacturing Practice for Type A Medicated Articles .....	0910-0154	8/31/2020
Animal Drug User Fee Cover Sheet, Form FDA 3546 .....	0910-0539	8/31/2020
Animal Drug User Fee Waivers and Reductions .....	0910-0540	8/31/2020
Index of Legally Marketed Unappropriated New Animal Drugs for Minor Species .....	0910-0620	8/31/2020
Voluntary National Retail Food Regulatory Program Standards .....	0910-0621	8/31/2020
Impact Trade Auxiliary Communication System .....	0910-0842	8/31/2020

Dated: November 20, 2017.

**Leslie Kux**,  
*Associate Commissioner for Policy.*  
[FR Doc. 2017-25452 Filed 11-24-17; 8:45 am]  
**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. **FDA-2010-N-0161**]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Food and Drug Administration-Regulated Products: Export Certificates**

**AGENCY:** Food and Drug Administration, HHS.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public

comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on export certificates for the export of FDA-regulated products.

**DATES:** Submit either electronic or written comments on the collection of information by January 26, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 26, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time

at the end of January 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:  
 • **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such

as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2010-N-0161 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Food and Drug Administration-Regulated Products: Export Certificates.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can

provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and

assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Export of Food and Drug Administration-Regulated Products: Export Certificates

OMB Control Number 0910-0498—Extension

In April 1996, the FDA Export, Reform, and Enhancement Act of 1996 (FDAERA) (Pub. L. 104-134) amended sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(e) and 382). It was designed to ease restrictions on exportation of unapproved pharmaceuticals, biologics, and devices regulated by FDA. Section 801(e)(4) of the FDAERA provides that persons exporting certain FDA-regulated products may request FDA to certify that the products meet the requirements of sections 801(e) and 802 or other requirements of the FD&C Act. This section of the law requires FDA to issue certification within 20 days of receipt of the request and to charge firms up to \$175 for the certifications. In January 2011, section 801(e)(4)(A) was amended by the FDA Food Safety Modernization Act (Pub. L. 111-353) to provide authorization for export certification fees for food and animal feed.

This section of the FD&C Act authorizes FDA to issue export certificates for regulated food, animal feed, pharmaceuticals, biologics, and devices that are legally marketed in the United States, as well as for these same products that are not legally marketed but are acceptable to the importing country, as specified in sections 801(e) and 802 of the FD&C Act. FDA has developed various types of certificates that satisfy the requirements of section 801(e)(4)(B) of the FD&C Act. Four of those certificates are discussed in this notice: (1) Certificates to Foreign Governments, (2) Certificates of Exportability, (3) Certificates of a Pharmaceutical Product, and (4) Non-Clinical Research Use Only Certificates. FDA has updated the certificates as part of the proposed collection of information to account for the amendment authorizing export certification fees for food and animal feed. Table 1 lists the different certificates and details their uses:

TABLE 1—CERTIFICATES AND USES

Type of certificate	Use
“Supplementary Information Certificate to Foreign Government Requests”, “Exporter’s Certification Statement Certificate to Foreign Government”, “Exporter’s Certification Statement Certificate to Foreign Government (For Human Tissue Intended for Transplantation)”.	For the export of products legally marketed in the United States.
“Supplementary Information Certificate of Exportability Requests”, “Exporter’s Certification Statement Certificate of Exportability”.	For the export of products not approved for marketing in the United States (unapproved products) that meet the requirements of sections 801(e) or 802 of the FD&C Act.
“Supplementary Information Certificate of a Pharmaceutical Product”, “Exporter’s Certification Statement Certificate of a Pharmaceutical Product”.	Conforms to the format established by the World Health Organization and is intended for use by the importing country when the product in question is under consideration for a product license that will authorize its importation and sale or for renewal, extension, amending, or reviewing a license.
“Supplementary Information Non-Clinical Research Use Only Certificate”, “Exporter’s Certification Statement (Non-Clinical Research Use Only)”.	For the export of a non-clinical research use only product, material, or component that is not intended for human use which may be marketed in, and legally exported from the United States under the FD&C Act.

FDA will continue to rely on self-certification by manufacturers for the first three types of certificates listed in table 1. Manufacturers are requested to self-certify that they are in compliance with all applicable requirements of the

FD&C Act, not only at the time that they submit their request to the appropriate center, but also at the time that they submit the certification to the foreign government.

The appropriate FDA centers will review product information submitted by firms in support of their certificate and any suspected case of fraud will be referred to the appropriate offices.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

FDA center	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research .....	2,651	1	2,651	1	2,651
Center for Devices and Radiological Health .....	11,175	1	11,175	2	22,350
Center for Drug Evaluation and Research .....	3,680	1	3,680	1	3,680
Center for Veterinary Medicine .....	1,819	1	1,819	1	1,819
<b>Total</b> .....					<b>30,500</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 20, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-25456 Filed 11-24-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-D-6526]

**Grandfathering Policy for Packages and Homogenous Cases of Product Without a Product Identifier; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a draft guidance for industry entitled “Grandfathering Policy for Packages and

Homogenous Cases of Product Without a Product Identifier.” This draft guidance specifies whether and under what circumstances packages and homogenous cases of product not labeled with a product identifier shall be exempted, as grandfathered, from certain requirements of the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

**DATES:** Submit either electronic or written comments on the draft guidance by January 26, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit either electronic or written comments concerning the collection of information proposed in the draft guidance by January 26, 2018.

**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-2017-D-6526 for “Grandfathering Policy for Packages and Homogenous Cases of Product Without a Product Identifier; Draft Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Abha Kundi, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-3130, [drugtrackandtrace@fda.hhs.gov](mailto:drugtrackandtrace@fda.hhs.gov); or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Grandfathering Policy for Packages and Homogenous Cases of Product Without a Product Identifier.” On November 27, 2013, the Drug Supply Chain Security Act (DSCSA) (Title II of Pub. L. 113-54) was signed into law. Section 202 of the DSCSA added section 582 to the FD&C Act, which established product tracing requirements for manufacturers, repackagers, wholesale distributors, and dispensers. The DSCSA phases in its requirements over a period of 10 years.

A critical set of phased product tracing requirements outlined in section 582 of the FD&C Act (21 U.S.C. 360eee-1) relate to the product identifier. Among its provisions, section 582 requires that each package and

homogenous case of product in the pharmaceutical distribution supply chain bear a product identifier that is encoded with the product’s standardized numerical identifier, lot number, and expiration date by specific dates. Under the statute, manufacturers must begin affixing or imprinting a product identifier to each package and homogenous case of a product intended to be introduced into commerce no later than November 27, 2017. Repackagers are required to do the same no later than November 27, 2018.

Sections 582(c)(2), (d)(2), and (e)(2)(A)(iii) of the FD&C Act restrict trading partners’ ability to engage in transactions involving packages and homogenous cases of product that are not labeled with a product identifier after specific dates. Beginning November 27, 2018, repackagers may not engage in a transaction involving a package or homogenous case of a product that is not encoded with a product identifier. Similar restrictions go into effect for wholesale distributors and dispensers on November 27, 2019, and November 27, 2020, respectively.

Section 582(a)(5)(A) of the FD&C Act gives FDA authority to exempt packages and homogenous cases of product without a product identifier from the product tracing requirements discussed above. We are required to issue guidance that specifies whether and under what circumstances we will exercise this authority. The draft guidance addresses this requirement. As explained in the draft guidance, only packages and homogenous cases of product that are in the pharmaceutical distribution supply chain at the time of the effective date of the requirements of section 582 are eligible for an exemption under section 582(a)(5)(A).

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency’s current thinking on the grandfathering policy for packages and homogenous cases of product without a product identifier. Guidance documents generally do not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. For this particular document, section 582 of the FD&C Act gives FDA authority to issue binding guidance specifying the circumstances under which packages and homogenous cases of product that are not labeled with a product identifier shall be exempted from the requirements of section 582 of the FD&C Act. Thus, insofar as section IV of this

guidance specifies the circumstances under which packages and homogenous cases of product that are not labeled with a product identifier and that are in the pharmaceutical distribution supply chain at the time of the effective date of the requirements of section 582 of the FD&C Act shall be exempted from certain requirements of section 582, it will have binding effect upon finalization.

**II. Electronic Access**

Persons with access to the internet may obtain the guidance document at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <https://www.regulations.gov>.

Dated: November 20, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-25457 Filed 11-24-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2011-N-0076]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Signatures**

**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 December 27, 2017.

**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 [aira\\_submission@omb.eop.gov](mailto:aira_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0303. 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, 301-796-7729, [PRStaff@fda.hhs.gov](mailto:PRStaff@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.

**Electronic Records; Electronic Signatures**

*OMB Control Number 0910-0303—Extension*

This information collection supports FDA regulations; specifically, in part 11 (21 CFR part 11), which sets forth criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the Agency has stated its ability to accept the records electronically in an Agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require the following standard operating procedures to assure appropriate use of, and precautions for, systems using

electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. The Agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA required records. The respondents are businesses and other for-profit organizations, State or local governments, Federal Agencies, and nonprofit institutions.

In the **Federal Register** of June 19, 2017 (82 FR 27838), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. No comments were received in response to the information collection topics solicited in the notice. However, one comment was received regarding a related Agency draft guidance entitled, “Use of Electronic Records and Electronic Signatures in Clinical Investigations Under 21 CFR part 11—Questions and Answers,” and the comment has been directed to the appropriate Agency components for consideration.

We therefore estimate the burden of this collection of information as follows:

**TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>**

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
11.100 .....	4,500	1	4,500	1	4,500

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.



TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
11.10 .....	2,500	1	2,500	20	50,000
11.30 .....	2,500	1	2,500	20	50,000
11.50 .....	4,500	1	4,500	20	90,000
11.300 .....	4,500	1	4,500	20	90,000
<b>Total</b> .....					<b>280,000</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 20, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-25453 Filed 11-24-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-D-4562]

#### Safety Assessment for Investigational New Drug Safety Reporting; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the public workshop entitled “Safety Assessment for IND Safety Reporting.” Convened by the Duke-Robert J. Margolis, MD, Center for Health Policy at Duke University and supported by a cooperative agreement with FDA, the purpose of the public workshop is to bring the stakeholder community together to discuss a variety of topics related to “Safety Assessment for Investigational New Drug (IND) Safety Reporting.” This public workshop is organized in response to public comments received to Docket No. FDA-2015-D-4562 for the draft guidance “Safety Assessment for IND Safety Reporting” issued in December 2015 requesting a public meeting to discuss the draft guidance and its implications. The public workshop is intended to engage external stakeholders in discussions related to finalizing the draft guidance entitled “Safety Assessment for IND Safety Reporting.”

**DATES:** The public workshop will be held on January 11, 2018, from 9 a.m. to 4 p.m., Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

**ADDRESSES:** The public workshop will be held at the Conference Center at 1777 F Street NW., Washington, DC 20006. For additional travel and hotel information, please refer to the following Web site: <https://healthpolicy.duke.edu/events/fda-ind-safety-reporting-meeting>. There will also be a live webcast for those unable to attend the meeting in person (see *Streaming Webcast of Public Workshop*).

#### FOR FURTHER INFORMATION CONTACT:

Lauren Wedlake, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6362, Silver Spring, MD 20993, 301-796-2728, [Lauren.Wedlake@fda.hhs.gov](mailto:Lauren.Wedlake@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The IND safety reporting requirements for human drugs and biological products being studied under an IND are stated in § 312.32 (21 CFR 312.32). In 2012, FDA published final guidance for industry and investigators regarding implementation of these requirements entitled “Safety Reporting Requirements for INDs and BA/BE Studies.”<sup>1</sup> During the evaluation of comments to the draft guidance for industry and investigators entitled “Safety Reporting Requirements for INDs and BA/BE Studies” (Docket No. FDA-2010-D-0482) and at meetings with stakeholders, FDA identified the need for additional guidance on IND safety reporting. The draft guidance for industry entitled “Safety Assessment for IND Safety Reporting” was issued in December 2015<sup>2</sup> as a follow-on to the guidance for industry and investigators entitled “Safety Reporting Requirements for INDs and BA/BE Studies” and provides recommendations for how sponsors of INDs can identify and evaluate important safety information

<sup>1</sup> Available at: <https://www.fda.gov/downloads/Drugs/Guidances/UCM227351.pdf>.

<sup>2</sup> <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM477584.pdf>.

that must be submitted to FDA and all participating investigators under the IND safety reporting regulations at § 312.32. The focus of this draft guidance is on safety information that is only interpretable in the aggregate and therefore, this guidance is most applicable to late-stage studies and drug development programs that have multiple studies. This guidance contains recommendations on the following matters that are most relevant to sponsors’ review of aggregate data for IND safety reporting: (1) The entity that reviews aggregate data, (2) methods for aggregate analyses of safety data, (3) maintaining trial integrity while reviewing unblinded data, and (4) reporting criteria. This guidance also contains recommendations regarding the development of a plan for safety surveillance, and includes considerations and recommendations.

Timely reporting of meaningful safety information allows FDA to consider whether any changes in study conduct should be made beyond those initiated by the sponsor and allows investigators to make any needed changes to protect subjects. Simply reporting all serious adverse events, however, including those where there is little reason to consider them suspected adverse reactions (suspected adverse reactions being those with a reasonable possibility of having been caused by the drug), does not serve this purpose because it may obscure safety information that is relevant to the investigational drug. Sponsors’ effective processes for a systematic approach to safety surveillance, coupled with IND safety reporting of suspected adverse reactions to FDA and all participating investigators (and subsequent reporting to involved institutional review boards), allows all parties to focus on important safety issues and to take actions to minimize the risks of participation in a clinical trial. Sponsors are encouraged to have internal processes for governing the safety surveillance and safety reporting for their development programs. Such process may include

documenting which adverse events are anticipated in the population under study and would not likely be reported as a single occurrence, but instead would be evaluated by assessing whether there are differences in the rate of occurrence of such events between those receiving the intervention and the concurrent or historical control.

This public workshop is being held in response to public comments received to Docket No. FDA-2015-D-4562 for the draft guidance entitled “Safety Assessment for IND Safety Reporting” issued in December 2015 requesting a public meeting to discuss the draft guidance recommendations and their implications, including the new recommendations regarding the formation of a safety assessment committee and the submission of a portion of the safety surveillance plan to the IND before initiating phase 2 or 3 studies. The public workshop is intended to engage external stakeholders in discussions related to finalizing the draft guidance entitled “Safety Assessment for IND Safety Reporting.”

## II. Topics for Discussion at the Public Workshop

During the public workshop, speakers and participants will address a range of issues related to the draft guidance “Safety Assessment for IND Safety Reporting”, issued in December 2015. Items for discussion will include topics raised in public comments submitted to the draft guidance docket, including but not limited to: The entity that conducts aggregate analysis of safety data for IND safety reporting, concerns with unblinding of data and trial integrity, methods for determining the threshold for reporting, and developing and documenting a plan for safety surveillance. Furthermore, input will be sought on other factors that drive over-reporting of safety events that do not meet the definition of a suspected unexpected serious adverse reaction.

## III. Participating in the Public Workshop

**Registration:** To register for the public workshop, please visit the following Web site: <https://healthpolicy.duke.edu/events/fda-ind-safety-reporting-meeting> and register online by January 8, 2018, midnight Eastern Time. There will be no onsite registration. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in

attending this public workshop must register online by January 8, 2018, midnight Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. Duke-Margolis will post on its Web site if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Sarah Supsiri at the Duke-Margolis Center for Health Policy, 202-791-9561, [sarah.supsiri@duke.edu](mailto:sarah.supsiri@duke.edu), no later than January 4, 2018.

**Streaming Webcast of the Public Workshop:** This public workshop will also be webcast; archived video footage will be available at the Duke-Margolis Web site (<https://healthpolicy.duke.edu/events/fda-ind-safety-reporting-meeting>) following the workshop. Organizations are requested to register all participants, but to view using one connection per location whenever possible. Webcast participants will be sent technical system requirements in advance of the event. Prior to joining the streaming webcast of the public workshop, we recommend that you review these technical system requirements in advance.

**Transcripts:** Please be advised that transcripts will not be available.

FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

**Meeting Materials:** All event materials will be provided to registered attendees via email prior to the workshop and publicly available at the Duke-Margolis Web site: <https://healthpolicy.duke.edu/events/fda-ind-safety-reporting-meeting>.

Dated: November 20, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-25454 Filed 11-24-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Health Care Services Outreach Program Performance Improvement and Measurement Systems (PIMS) Measures, OMB No. 0906-0009—Revision

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR must be received no later than January 26, 2018.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

**Information Collection Request Title:** Rural Health Care Services Outreach Program Performance Improvement and Measurement Systems (PIMS) Measures OMB No. 0906-0009 Revision.

**Abstract:** The Rural Health Care Services Outreach (Outreach) Program is authorized by Section 330A(e) of the Public Health Service (PHS) Act (42 U.S.C. 254c(e)), as amended, to “promote rural health care services outreach by expanding the delivery of health care services to include new and enhanced services in rural areas.” The goals for the Outreach Program are as follows: (1) Expand the delivery of

health care services in rural communities; (2) deliver health care services through a strong consortium, in which every consortium member organization is actively involved and engaged in the planning and delivery of services; (3) utilize and/or adapt an evidence-based or promising practice model(s) in the delivery of health care services; and (4) improve population health, demonstrate health outcomes and sustainability.

**Need and Proposed Use of the Information:** The PIMS measures for the Outreach Program enable HRSA and the Federal Office of Rural Health Policy to capture awardee-level and aggregate data that illustrate the impact and scope of federal funding. The collection of this information helps further inform and substantiate the focus and objectives of the grant program. The measures encompass the following topics: (a) Access to care; (b) population demographics; (c) consortium/network;

(d) sustainability; and (f) project specific domains.

There are proposed revisions to the currently approved Outreach Program PIMS measures. The proposed Outreach PIMS measures reflect a reduced number of measures including the following: 16 process measures applicable to all awardees (previously 22), consolidation of the project-specific measures (currently 7, previously 8), and 8 clinical measures (previously 9). In addition, the proposed measures include the addition of two Centers for Disease Control and Prevention (CDC) calculators: The CDC Heart Age calculator and the CDC BMI Percentile Calculator for Child and Teen. Data for both calculators will be collected on an aggregate level and only from awardees with applicable projects; the CDC Heart Age calculator is specific to awardees participating in the Health Improvement Special Project while the CDC BMI calculator is for projects focusing on childhood obesity.

**Likely Respondents:** The respondents are award recipients of the Rural Health Care Services Outreach Program.

**Burden Statement:** Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Name of instrument .....	25	1	25	3.0	75.0
Total .....	25	.....	25	.....	75.0

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Amy McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2017-25508 Filed 11-24-17; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Public Comment Request**

Information Collection Request Title: Rural Health Network Development Program, OMB No. 0906-0010—Revision

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received no later than January 26, 2018.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA

Information Collection Clearance Officer at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

**Information Collection Request Title:** Rural Health Network Development Program OMB No. 0906-0010—Revision.

**Abstract:** The purpose of the Rural Health Network Development (RHND) program is to support mature, integrated rural health care networks that have combined the functions of the entities participating in the network in order to address the health care needs of the targeted rural community. Awarded programs combine the functions of the entities participating in the network to create innovative solutions to local healthcare needs while addressing the following statutory charges: (i) Achieve efficiencies; (ii) expand access, coordinate, and improve the quality of essential health care services; and (iii) strengthen the rural health care system as a whole.

RHND funded programs promote population health management and the transition towards value based care through diverse network membership that include traditional and non-traditional network partners collaborating to address the local healthcare needs of the targeted community. Evidence of program effectiveness demonstrated by outcome data and program sustainability are integral components of the program. This is a three-year competitive program for mature networks composed of at least three members that are separate, existing health care providers entities.

*Need and Proposed Use of the Information:* For this program,

performance measures provide data to program staff and enable HRSA to provide aggregate program data. These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) Network infrastructure; (b) sustainability; (c) community impact; and (d) access and quality of healthcare.

For this revised ICR, there are proposed changes to several measures that include network infrastructure, sustainability, community impact, and access and quality of healthcare.

*Likely Respondents:* The respondents are the RHND Program grant recipients.

*Burden Statement:* Burden in this context means the time expended by

persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement and Measurement System (PIMS) Database .....	51	1	51	6	306
Total .....	51	.....	51	.....	306

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2017-25509 Filed 11-24-17; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

**Agency Information Collection Activities: Proposed Collection: Public Comment Request Information**  
**Collection Request Title: Ryan White HIV/AIDS Program Client-Level Data Reporting System, OMB No. 0906-XXXX—New**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than January 26, 2018.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference, pursuant to Section 3506(c)(2)(A), the Paperwork Reduction Act of 1995.

*Information Collection Request Title:* Client-Level Data Reporting System OMB No. 0906-XXXX—New.

*Abstract:* The Ryan White HIV/AIDS Program's (RWHAP) client-level data reporting system, entitled the RWHAP Services Report or the Ryan White Services Report (RSR), is designed to collect information from grant recipients, as well as their subcontracted service providers, funded under Parts A, B, C, and D of the RWHAP legislation. The RWHAP, authorized under Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009, is administered by the HIV/AIDS Bureau (HAB) within the Health Resources and Services Administration (HRSA). The RWHAP awards funding to recipients to respond effectively to the changing HIV epidemic, with an emphasis on providing life-saving and life-extending services for people living with HIV in the United States, as well as to target resources to areas that have the greatest needs.

*Need and Proposed Use of the Information:* All Parts of the RWHAP specify HRSA's responsibilities in administering grant funds, allocating funding, assessing HIV care outcomes (e.g., viral suppression) and populations served. The RSR will collect data on the characteristics of RWHAP-funded recipients, their contracted service providers, and the patients or clients served. The RSR system will consist of two online data forms, the Recipient

Report and the Service Provider Report, as well as a data file containing the client-level data elements. Data will be submitted annually. The RWHAP statute specifies the importance of recipient accountability and linking performance to budget. The RSR will be used to ensure recipient compliance with the law, including evaluating the effectiveness of programs, monitoring recipient and provider performance, and informing annual reports to Congress. Information collected through the RSR will be critical for HRSA, state and local grant recipients, and individual providers to assess the status of existing HIV-related service delivery systems, assess trends in service utilization, assess the impact of data reporting and identify areas of greatest need.

This new ICR is being developed to replace the existing ICR (OMB control number 0915-0323), for which HRSA has collected RSR data since 2009.

These revisions will account for significant modifications to several variables within the client report and XML file, which will improve data quality and align data collection efforts with recent Policy Clarification Notices (PCN 16-02). HRSA will continue to collect and report the client-level data elements supplied by the existing ICR through 2019. In 2019, the existing ICR will expire and HRSA will collect and report on the data elements defined in the new ICR. While there will be no overlap in the data collected and reported between the existing and new ICR, HRSA is submitting this new ICR in tandem with the existing ICR to allow recipients the ability to make modifications to their RSR systems between the two reporting periods, and continue to collect and report on both the old and new variables without interruption.

*Likely Respondents:* RWHAP Part A, Part B, Part C, and Part D recipients and their contracted service providers.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee Report .....	595	1	595	7	4,165
Provider Report .....	1793	1	1793	17	30,481
Client Report .....	1,312	1	1,312	67	87,904
Total .....	3,700	.....	3,700	.....	122,550

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Amy McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2017-25510 Filed 11-24-17; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: NURSE Corps Loan Repayment Program OMB No. 0915-0140—Revision**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than January 26, 2018.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* NURSE Corps Loan Repayment Program OMB No. 0915-0140—Revision.

*Abstract:* The NURSE Corps Loan Repayment Program (NURSE Corps LRP) assists in the recruitment and retention of professional Registered Nurses (RNs) by decreasing the financial barriers associated with pursuing a nursing education. RNs in this instance include advanced practice RNs (e.g., nurse practitioners, certified registered nurse anesthetists, certified nurse-midwives, and clinical nurse

specialists) dedicated to working at eligible health care facilities with a critical shortage of nurses (i.e., a Critical Shortage Facility) or working as nurse faculty in eligible, accredited schools of nursing. The NURSE Corps LRP provides loan repayment assistance to these nurses to repay a portion of their qualifying educational loans in exchange for full-time service at a public or private nonprofit Critical Shortage Facility (CSF) or in an eligible, accredited school of nursing.

*Need and Proposed Use of the Information:* The need and purpose of this information collection is to obtain information regarding NURSE Corps LRP applicants and participants to be used to consider an applicant for a NURSE Corps LRP contract award and to monitor a participant's compliance with the program's service requirements. Individuals must submit an application in order to participate in the program. The application asks for personal, professional, educational, and financial information required to determine the applicant's eligibility to participate in the NURSE Corps LRP. The Semi-Annual Employment Verification Form asks for personal and

employment information about the participant to determine if a participant is in compliance with the program's service requirements. The Authorization to Release Employment Information Form is now a self-certification within the NURSE Corps LRP application process, with applicants clicking a box.

This revision to the clearance package will incorporate two new forms for participants: (1) The CSF Verification Form, which is used to verify transfers to critical shortage facilities not already recorded in the online portal; and (2) the NURSE Corps Nurse Faculty Employment Verification Form, which asks for personal and employment information to specifically determine if nurse faculty participants are eligible to transfer to another approved accredited school of nursing.

*Likely Respondents:* Professional RNs or advanced practice RNs who are interested in participating in the NURSE Corps LRP, and official representatives at their service sites.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to

develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below. The change in the Authorization to Release Employment Information Form has reduced the time necessary for applicants to complete the form from an estimated six minutes to around one minute for online applicants. This decreases the overall time burden by eliminating a form and not increasing the "average" time required to complete the NURSE Corps LRP application. Most applicants fill this form out online by checking a box, bypassing the need for the physical form.

Total Estimated Annualized Burden Hours:

The estimates of reporting burden for Applicants are as follows:

Instrument	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total burden hours
NURSE Corps LRP Application * .....	5,500	1	5,500	2.0	11,000
Authorization to Release Employment Information Form **	5,500	1	5,500	.10	550
<b>Total for Applicants .....</b>	<b>5,500</b>	<b>1</b>	<b>11,000</b>	<b>2.10</b>	<b>11,550</b>

\* The burden hours associated with this instrument account for both new and continuation applications. Additional (uploaded) supporting documentation is included as part of this instrument and reflected in the burden hours.

\*\* The same respondents are completing these instruments.

The estimates of reporting for Participants are as follows:

Instrument	Number of respondents	Responses/ respondents	Total responses	Hours per response	Total burden hours
Participant Semi-Annual Employment Verification Form .....	2,300	2	4,600	.5	2,300
NURSE Corps CSF Verification Form .....	550	1	550	.10	55
NURSE Corps Nurse Faculty Employment Verification Form .....	250	1	250	.20	50
<b>Total for Participants .....</b>	<b>3,100</b>	<b>4</b>	<b>5,400</b>	<b>.8</b>	<b>2,405</b>
<b>Total for Applicants and Participants .....</b>	<b>8,600</b>	<b>.....</b>	<b>16,400</b>	<b>.....</b>	<b>*13,955</b>

\* The 13,955 figure is a combination of burden hours for applicants and participants. This revision adds two forms (the CSF Verification Form and NURSE Corps Nurse Faculty Employment Verification Form). Participants, not applicants, only use these forms. The 13,955 total burden hours represents the net decrease in applicant burden, and the net increase in participant burden.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Amy McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2017-25507 Filed 11-24-17; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Chronic Fatigue Syndrome Advisory Committee

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that a meeting of the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will take place and will be open to the public.

**DATES:** The CFSAC in person meeting will be held on Wednesday, December 13, 2017, from 9:00 a.m. until 3:30 p.m. and Thursday, December 14, 2017, from 9:00 a.m. until 5:00 p.m. (EST).

**ADDRESSES:** U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Commander Gustavo Ceinos, MPH, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, 200 Independence Avenue SW., Room 728F6, Washington, DC 20201. Please direct all inquiries to [cfsac@hhs.gov](mailto:cfsac@hhs.gov) or 202-690-7650.

**SUPPLEMENTARY INFORMATION:** The CFSAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The purpose of the CFSAC is to provide advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health (ASH), on issues related to myalgic encephalomyelitis/chronic fatigue

syndrome (ME/CFS). The issues can include factors affecting access and care for persons with ME/CFS; the science and definition of ME/CFS; and broader public health, clinical, research, and educational issues related to ME/CFS.

The agenda for this meeting, call-in information and location will be posted on the CFSAC Web site <http://www.hhs.gov/ash/advisory-committees/cfsac/meetings/index.html>.

Request to speak to the committee: Each day of the meeting an hour has been scheduled for public comments via telephone or in person. Individuals will have three minutes to present their comments. Priority will be given to individuals who have not provided public comment within the previous twelve months. We are unable to place international calls for public comments. To request a time slot for public comments, please send an email to [cfsac@hhs.gov](mailto:cfsac@hhs.gov) by close of business on Monday, November 27, 2017. The email should contain the speaker's name and the phone number that will be used for public comments.

An email from the CFSAC Support Team will be sent back to you confirming receipt of your request. If the email confirmation is not received within two working days, please call 202-690-7650.

Request to provide written comments: Individuals who would like to provide only written testimony to the Committee members and do not wish to speak, should indicate so in their email when submitting their written testimony. It is preferred, but not required, that the submitted testimony be prepared in digital format and typed using a 12-pitch font. Written comments must not exceed 5 single-space pages, and it is preferred, but not required that the document be prepared in the MS Word format. Please note that PDF files, handwritten notes, charts, and photographs cannot be accepted. Materials submitted should not include sensitive personal information, such as social security number, birthdates, driver's license number, passport number, financial account number, or credit or debit card number. If you wish to remain anonymous please specify this in your email, otherwise your name will be included at the top of your written comments.

The Committee welcomes input on any topic related to ME/CFS.

Dated: November 17, 2017.

**Gustavo Ceinos,**

*CDR, USPHS, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee.*

[FR Doc. 2017-25550 Filed 11-24-17; 8:45 am]

**BILLING CODE 4150-42-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Mahandranauth Chetram, Ph.D., Georgetown University and Emory School of Medicine:* Based on the report of an investigation conducted by Georgetown University (GU), Respondent's admission at Emory School of Medicine (ESOM), and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Mahandranauth Chetram, former postdoctoral fellow, Department of Oncology, GU, and former postdoctoral fellow, Department of Pediatrics, ESOM, engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grants R01 CA113447, R01 CA092306, and T32 CA09686 while at GU, and National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH, grant R01 DK059380 while at ESOM.

ORI found that Respondent engaged in research misconduct at GU by falsifying Western blot images and polymerase chain reaction (PCR) data included in an unfunded grant application, R01 CA193344-01A1, and in a manuscript submitted to *Cancer Cell* ("The DNA Repair Protein, NTHL1 Functions as an Oncoprotein by Activating the Canonical Wnt Pathway." Submitted to *Cancer Cell*; hereafter referred to as the "*Cancer Cell* manuscript"). Subsequently, after Respondent was aware of the research misconduct findings from GU, Respondent engaged in research misconduct at ESOM and falsified RT-PCR data on Excel spreadsheets in the research record and in a figure generated from the false data included in a manuscript submitted to and withdrawn from *Scientific Reports* ("Imipramine Blue Sensitive and Selectively Targets FLT3-ITD Positive Acute Myeloid Leukemia Cells." *Scientific Reports* 7(1):4447, 2017 June

30; doi:10.1038/s41598-017-04796-1. PMID: 28667329. Submitted to *Scientific Reports* [withdrawn]; hereafter referred to as the “*Scientific Reports* manuscript”).

Specifically, ORI found:

- While at GU, Respondent falsified Western blot images and qPCR experiments examining mechanisms underlying the hypothesis that the DNA repair protein, NTHL-1, regulates wingless signaling in cancer cells. False Western blot images were included in Figures 6A and S7L in the *Cancer Cell* manuscript, and the same Figure 6A was included as Figure 8A in grant application R01 CA193344-01A1. False qPCR data were included in Figures 3F and 5D in the *Cancer Cell* manuscript and Figures 5C (MCF7 panel) and 5E of grant application R01 CA193344-01A1.

- While at ESOM, Respondent falsified data on Excel spreadsheets for eight (8) RT-PCR experiments measuring the expression of various genes in leukemia cell lines and included false data in the *Scientific Reports* manuscript.

Dr. Chetram entered into a Voluntary Exclusion Agreement and voluntarily agreed for a period of three (3) years, beginning on October 19, 2017:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement programs of the United States Government referred to as “covered transactions” pursuant to HHS’ Implementation (2 CFR part 376 *et seq.*) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the “Debarment Regulations”); and

(2) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:**

Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8200.

**Kathryn M. Partin,**

Director, Office of Research Integrity.

[FR Doc. 2017-25549 Filed 11-24-17; 8:45 am]

**BILLING CODE 4150-31-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Eye Institute; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Eye Council.

*Date:* January 18, 2018.

*Open:* 8:30 a.m. to 1:00 p.m.

*Agenda:* Following opening remarks by the Director, NEI, there will be presentations by the staff of the institute and discussions concerning Institute programs.

*Place:* Fishers Lane Conference Center, Terrace Level, 5635 Fishers Lane, Rockville, MD 20852.

*Closed:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Fishers Lane Conference Center, Terrace Level, 5635 Fishers Lane, Rockville, MD 20852.

*Contact Person:* Paul A. Sheehy, Ph.D., Executive Secretary, Division of Extramural Affairs, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 12300, Bethesda, MD 20892, 301-451-2020, [ps32h@nih.gov](mailto:ps32h@nih.gov).

Information is also available on the Institute’s/Center’s home page: [www.nei.nih.gov](http://www.nei.nih.gov), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 20, 2017.

**Natasha M. Copeland,**

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017-25449 Filed 11-24-17; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Environmental Health Sciences; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR E-Learning Review.

*Date:* December 4, 2017.

*Time:* 11:00 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Room 3118, Research Triangle Park, NC 27709 (Teleconference).

*Contact Person:* Janice B Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P. O. Box 12233, MD EC-30/ Room 3170, B Research Triangle Park, NC 27709, 919/541-7556, [allen9@niehs.nih.gov](mailto:allen9@niehs.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel Assay Development: Toxicity Testing with Differentiated Cells Special Emphasis Panel Review.

*Date:* December 5, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713 (Virtual Meeting).

*Contact Person:* Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P. O. Box 12233, MD EC-



30/Room 3171, Research Triangle Park, NC 27709, (919) 541-0670, [worth@niehs.nih.gov](mailto:worth@niehs.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel NIH Support for Conferences and Scientific Meetings (Parent R13).

*Date:* December 5, 2017.

*Time:* 10:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713 (Teleconference).

*Contact Person:* RoseAnne M McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-0752, [mcgee1@niehs.nih.gov](mailto:mcgee1@niehs.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel Mechanism for Time-Sensitive Research Opportunities In Environmental Health Sciences (R21).

*Date:* December 13, 2017.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Room 1002, Research Triangle Park, NC 27709 (Teleconference).

*Contact Person:* Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919-541-2824, [laura.thomas@niehs.nih.gov](mailto:laura.thomas@niehs.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 20, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-25451 Filed 11-24-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* January 29, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Mark A. Mueller, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 5601 Fishers Lane, RM 8D39 Bethesda, MD 20892, 301-402-2308, [mark.mueller@niehs.nih.gov](mailto:mark.mueller@niehs.nih.gov).

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* June 4, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1/E2 45, Center Drive, Bethesda, MD 20892.

*Contact Person:* Mark A. Mueller, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 5601 Fishers Lane, RM 8D39 Bethesda, MD 20892, 301-402-2308, [mark.mueller@niehs.nih.gov](mailto:mark.mueller@niehs.nih.gov).

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* September 17, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Mark A. Mueller, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 5601 Fishers Lane, RM 8D39, Bethesda, MD 20892, 301-402-2308, [mark.mueller@niehs.nih.gov](mailto:mark.mueller@niehs.nih.gov).

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a

government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 17, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-25450 Filed 11-24-17; 8:45 am]

**BILLING CODE 4140-01-P**

## INTER-AMERICAN FOUNDATION

### Sunshine Act Meetings

**TIME AND DATE:** November 28, 2017, 11:00 a.m.–12:30 p.m.

**PLACE:** Via tele-conference hosted at Inter-American Foundation, 1331 Pennsylvania Ave., Suite 1200, NW., Washington, DC 20004.

**STATUS:** Meeting of the Board of Directors, Open to the public.

#### MATTERS TO BE CONSIDERED:

- FY19 Budget Submission

**FOR DIAL-IN INFORMATION CONTACT:** Karen Vargas, Executive Assistant, (202) 524-8869.

**CONTACT PERSON FOR MORE INFORMATION:** Paul Zimmerman, General Counsel, (202) 683-7118.

**Paul Zimmerman,**

*General Counsel.*

[FR Doc. 2017-25730 Filed 11-22-17; 5:10 pm]

**BILLING CODE 7025-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-HQ-MB-2017-N152; 91100-3740-GRNT 7C]

#### Announcement of Public Meetings: North American Wetlands Conservation Council; Advisory Group for the Neotropical Migratory Bird Conservation Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The Council will consider Canada, Mexico, and U.S.

Standard grant proposals. The Advisory Group for the Neotropical Migratory Bird Conservation Act (NMBCA) grants program (Advisory Group) also will meet. The Advisory Group will discuss the strategic direction and management of the NMBCA program. Both meetings are open to the public, and interested persons may present oral or written statements.

**DATES:**

*Council:* December 13, 2017, from 8:30 a.m. to 4:30 p.m. Eastern Standard Time.

*Advisory Group:* December 12, 2017, from 8:30 a.m. to 4:30 p.m. Eastern Standard Time.

*Attendance:* To attend either or both meetings, contact the Council/Advisory Group Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than December 5, 2017.

*Presenting Information:* If you are interested in presenting information, contact the Council/Advisory Group Coordinator no later than December 5, 2017.

*Submitting Information:* To submit written information or questions before the Council or Advisory Group meeting for consideration during the meeting, contact the Council/Advisory Group Coordinator no later than December 5, 2017.

**ADDRESSES:** The Council and Advisory Group meetings will take place at the National Fish and Wildlife Foundation, 1133 15th Street NW., Suite 1000, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Sarah Mott, Council/Advisory Group Coordinator, by phone at 703-358-1784; by email at [dbhc@fws.gov](mailto:dbhc@fws.gov); or by U.S. mail at U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 during normal business hours. Also, FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:****About the Council**

In accordance with the North American Wetlands Conservation Act (Pub. L. 101-233, 103 Stat. 1968, December 13, 1989, as amended; NAWCA), the State-private-Federal North American Wetlands Conservation Council (Council) meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Migratory Bird

Conservation Commission. NAWCA provides matching grants to organizations and individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico. These projects must involve long-term protection, restoration, and/or enhancement of wetlands and associated uplands habitats for the benefit of all wetlands-associated migratory birds. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at [www.fws.gov/birds/grants/north-american-wetland-conservation-act.php](http://www.fws.gov/birds/grants/north-american-wetland-conservation-act.php).

**About the Advisory Group**

In accordance with Neotropical Migratory Bird Conservation Act (Pub. L. 106-247, 114 Stat. 593, July 20, 2000; NMBCA), the Advisory Group will hold its meeting to discuss the strategic direction and management of the NMBCA program and provide advice to the Director of the Fish and Wildlife Service. NMBCA promotes long-term conservation of neotropical migratory birds and their habitats through a competitive grants program by promoting partnerships, encouraging local conservation efforts, and achieving habitat protection in 36 countries. The goals of NMBCA include perpetuating healthy bird populations, providing financial resources for bird conservation, and fostering international cooperation. Because the greatest need is south of the U.S. border, at least 75 percent of NMBCA funding supports projects outside the United States. Project proposal due dates, application instructions, and eligibility requirements are available on the NMBCA Web site at <http://www.fws.gov/birds/grants/neotropical-migratory-bird-conservation-act.php>.

**Public Input***Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions to be considered during the public meetings. If you wish to make information available to the Council or Advisory Group for their consideration prior to the meeting, you must contact the Council/Advisory Group Coordinator by the date in **DATES**. Written statements must be supplied to the Council/Advisory Group Coordinator in both of the following formats: One hard copy with original signature and one electronic copy via email (acceptable file formats are Adobe

Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation at the meetings will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council/Advisory Group Coordinator, by the date specified above in **DATES**, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**) to be placed on the public speaker list for the meetings. Nonregistered public speakers will not be considered during the Council or Advisory Group meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, are invited to submit written statements to the Council or Advisory Group within 30 days following the meeting.

**Meeting Minutes**

Summary minutes of the Council and Advisory Group meetings will be maintained by the Council/Advisory Group Coordinator at the address under **FOR FURTHER INFORMATION CONTACT**. Meeting notes will be available by contacting the Council/Advisory Group Coordinator within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

*Authority:* We issue this notice under the authority of NAWCA (Pub. L. 101-233, 103 Stat. 1968, December 13, 1989, as amended).

Dated: November 20, 2017.

**Michael Johnson,**

*Deputy Assistant Director, Migratory Birds.*

[FR Doc. 2017-25477 Filed 11-24-17; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

**[Docket No. FWS-HQ-IA-2017-0078; FXIA1671090000-156-FF09A30000]**

**Foreign Endangered Species; Issuance of Permits**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA).

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358-2281. To locate the

**Federal Register** notice that announced our receipt of the application for each permit listed in this document, go to [www.regulations.gov](http://www.regulations.gov) and search on the permit number provided in the tables in **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Joyce Russell, (703) 358-2023 (telephone); (703) 358-2281 (fax); or [DMAFR@fws.gov](mailto:DMAFR@fws.gov) (email).

**SUPPLEMENTARY INFORMATION:** On the dates below, as authorized by the

provisions of the ESA, as amended (16 U.S.C. 1531 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

#### ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application <b>Federal Register</b> notice	Permit issuance date
23963c .....	Janis Maund .....	82 FR 28348; June 21, 2017 .....	8/29/2017
32538C .....	Amanda Henson .....	82 FR 35817; August 1, 2017 .....	9/14/2017
31910C .....	Zoological Society of Philadelphia .....	82 FR 37603; August 11, 2017 .....	9/15/2017
700877 .....	Bishop Museum .....	82 FR 32374; July 13, 2017 .....	9/19/2017
64738A .....	Palfam Ranch .....	82 FR 35817; August 1, 2017 .....	9/22/2017
14837C .....	Temple .....	82 FR 28348; June 21, 2017 .....	9/13/2017
66306A .....	Wildwood Wildlife Park and Nature Center, Inc .....	82 FR 33924; July 21, 2017 .....	9/28/2017

#### Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358-2281.

*Authority:* We issue this notice under the authority of the ESA, as amended (16 U.S.C. 1531 *et seq.*).

#### Joyce Russell,

*Government Information Specialist, Branch of Permits, Division of Management Authority.*

[FR Doc. 2017-25501 Filed 11-24-17; 8:45 am]

**BILLING CODE 4333-15-P**

#### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[LLCAD07000 L51010000 ER0000 16X LVRWB09B1670]

#### Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed United States Gypsum Company Mine Expansion/Modernization Project, Imperial County, CA

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) El Centro Field Office, with the United States Army Corps of Engineers (USACE) as a cooperating agency, intends to prepare a Supplemental Environmental Impact Statement (EIS) for the United States Gypsum Company (USG) Mine Expansion/Modernization Project. The Supplemental EIS will analyze additional alternatives and update technical information in the 2008 USG Mine Expansion/Modernization Project Final Environmental Impact Report (EIR)/EIS. The USACE was not involved in the development of the EIR/EIS, but will be involved with the Supplemental EIS, based on USACE's jurisdiction by law and special expertise, pursuant to section 404 of the Clean Water Act. Scoping is not usually required for preparation of a Supplemental EIS. However, since USACE was not a cooperating agency during scoping of the EIR/EIS, they have requested that public scoping be included for the Supplemental EIS.

This notice announces the beginning of the public scoping process for input into the Supplemental EIS. The goal of the scoping process is to solicit public comments, for the purpose of identifying relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the Supplemental EIS.

**DATES:** Comments for input into the Supplemental EIS may be submitted in writing until January 11, 2018. A public scoping meeting will be announced at least 15 days in advance through local newspaper(s), the BLM Web site, BLM Newsbytes, and BLM social media. All comments received during the scoping period will be considered for input into the Supplemental EIS. In order to be included in the Supplemental EIS, all comments must be received prior to the close of the 45-day scoping period or 15 days after the last public meeting, whichever is later. Additional opportunities for public participation will be provided upon publication of a Draft Supplemental EIS. Upon completion of the public review and comment period of the Draft Supplemental EIS, a Final Supplemental EIS will be prepared and subsequently published for public review.

**ADDRESSES:** You may submit comments on issues related to the Supplemental EIS by any of the following methods: Email: [lgreenhalgh@blm.gov](mailto:lgreenhalgh@blm.gov); Fax: 530-224-2172; or Mail: Attn: Susie Greenhalgh, BLM Northern California District Office, 6640 Lockheed Drive, Redding, CA 96002.

**FOR FURTHER INFORMATION CONTACT:** Susie Greenhalgh, BLM Northern California District Office, 6640 Lockheed Drive, Redding, CA 96002; phone: 530-224-2142; email: [lgreenhalgh@blm.gov](mailto:lgreenhalgh@blm.gov). Contact Ms. Greenhalgh to have your name added to our mailing list. Persons who use a telecommunications device for the deaf

(TDD) may call the Federal Relay Service at 1-800-877-8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The USG's mine expansion/modernization project (Project) involves both the Plaster City Wallboard Plant (Plant) and Plaster City Quarry (Quarry). The Plant is located on Evan Hewes Highway in Plaster City, CA, approximately 18 miles west of the city of El Centro. The Quarry is located on Split Mountain Road approximately 26 miles northwest of Plaster City. Both sites are located within the BLM's California Desert Conservation Area. Components of the expansion project originally analyzed in the EIR/EIS included water delivery systems to the wallboard plant and quarry, a new electrical transmission line, and maintenance of an existing tram road using narrow gauge rail line between the Plant and Quarry. Certain aspects of the project have already been implemented under the conditions and approvals provided by Imperial County and may not be subject to the jurisdiction of the BLM or the USACE.

The surface disturbance analyzed in the 2006 Draft EIR/EIS and the 2008 Final EIR/EIS included operations on placer mining claims and mill sites on BLM land totaling 407.9 acres. Since then, 304.57 acres of these mining claims were patented, subject to regulations as may be prescribed by the Secretary of the Interior to protect the scenic, scientific, and environmental values of the public lands within the California Desert Conservation Area. Pursuant to 43 CFR 3809.2(c), lands patented with this stipulation must comply with the regulations at 43 CFR 3809.

Consequently, the Supplemental EIS will update land ownership changes since completion of the 2006/2008 environmental documents, but the analysis of the applicable regulations and impacts will not need to be changed because of the change in land ownership.

Additionally, USG submitted two right of way applications for the utility access across approximately 55.7 acres of BLM-managed land. BLM's involvement consists of responding to a plan of operations, the two right of way applications, and any other project needs that may be discovered during the scoping process. USG also submitted a request for a Clean Water Act (CWA) Section 404 Permit to the USACE for

expansion of operations into alluvial portions of the quarry. USACE's involvement consists of responding to the Section 404 Permit.

At present, the following preliminary issues have been identified: hydrology and water resources, threatened and endangered species, realty/right-of-ways, mineral resources, and cultural resources. The BLM will identify, analyze, and require mitigation, as appropriate, to address the reasonably foreseeable impacts to resources from the project. The BLM will utilize and coordinate the NEPA process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed USG Project that the BLM and USACE are evaluating, are invited to participate in the public scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

In December 2001, Imperial County, California, published the Notice of Preparation of the joint EIR/EIS for the USG Expansion/Modernization Project pursuant to the California Environmental Quality Act (CEQA). As the lead agency for the project under NEPA, the BLM issued a Notice of Intent to prepare a joint EIR/EIS in the **Federal Register** on May 1, 2002 (67 FR 21713). A Draft EIR/EIS was prepared for the project and was circulated for comment by the public and other interested agencies from April 17, 2006, to July 17, 2006. The BLM also initiated consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA). A Final EIR/EIS responding to comments was released in January of 2008.

On March 18, 2008, the Imperial County Board of Supervisors certified the EIR and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program in compliance with CEQA. The Imperial County Board of Supervisors filed a Notice of Determination on March 19, 2008. On March 14, 2008, the BLM published in the **Federal Register** the Notice of Availability of the USG Expansion/Modernization Project Final

EIR/EIS (73 FR 13918). The BLM did not issue a ROD because its ESA Section 7 consultation requirements were still pending.

USG proceeded to conduct quarrying operations within its private land at the Quarry under the conditions and approvals provided by Imperial County and the State of California consistent with stipulations outlined by the County. Under existing conditions, USG holds title to 2,032.2 acres of private land of which 1,118.7 acres are approved by Imperial County for mining. In order to proceed with phased quarry operations consistent with production demands and an approved Mine Reclamation Plan, USG proposes to initiate alluvial quarrying activities in undisturbed portions of its mine plan. Proposed project activities related to alluvial quarrying will require a CWA Section 404 Permit from the USACE. The USACE was not a cooperating agency in the development of the USG Expansion/Modernization Project Final EIR/EIS.

In March 2014, USG submitted a request for a Clean Water Act (CWA) Section 404 Permit to the USACE for expansion of operations into alluvial portions of the quarry, Phase 2 and 2P of the Quarry's mine plan. The USACE determined in its initial evaluation of the application that an EIS-level analysis may be required to evaluate impacts to waters of the U.S., including a CWA Section 404(b)(1) alternatives analysis (pursuant to 40 CFR part 230). The USACE could not adopt the USG Final EIR/EIS, per Federal regulations at 40 CFR 1506.3(c), because the USACE was not a cooperating agency at the time of the development of the EIR/EIS. Furthermore, the BLM did not complete its ESA Section 7 consultation requirements or issue a Record of Decision (ROD) based on the Final EIR/EIS.

**Public Comments:** Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1501.7.

**Thomas F. Zale,**  
*El Centro Field Manager.*

[FR Doc. 2017-25523 Filed 11-24-17; 8:45 am]

**BILLING CODE 4310-40-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NRNL-24652;  
PPWOCRADIO, PCU00RP14.R50000]

**National Register of Historic Places;  
Notification of Pending Nominations  
and Related Actions**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before November 4, 2017, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by December 12, 2017.

**ADDRESSES:** Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 7228, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 4, 2017. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State Historic Preservation Officers:

**CALIFORNIA****Los Angeles County**

Drucker, Peter, House, 636 Wellesley Dr., Claremont, SG100001890

**Orange County**

Pomona Court and Apartments, 314–320 N. Paloma & 200–204 E. Whiting Aves., Fullerton, SG100001891

**Sacramento County**

Southside Park (Latinos in 20th Century California MPS), Between T, W, 6th & 8th Sts., Sacramento, MP100001892

**MARYLAND****Howard County**

Forest View, 1805 Marriottsville Rd., Marriottsville vicinity, SG100001894

**MONTANA****Fergus County**

Draft Horse Barn, Fergus County Fairgrounds, 1000 US 191, Lewistown, SG100001895

**Flathead County**

DESMET (Boat) (Glacier National Park MPS, AD), L. McDonald, Glacier NP, West Glacier vicinity, MP100001896

**Glacier County**

LITTLE CHIEF (Boat) (Glacier National Park MPS, AD), Two Medicine L., Glacier NP, East Glacier Park vicinity, MP100001897

**Jefferson County**

Grant-Marshall Lime Kiln Historic District, The 1,000 ft. S. of S. end of Crystal Dr., Helena vicinity, SG100001898

**OHIO****Erie County**

Downtown Sandusky Commercial Historic District, Roughly bounded by Shoreline Dr., Washington Row, Hancock & Decatur Sts., Sandusky, SG100001899

**WEST VIRGINIA****Jefferson County**

Wild Goose Farm, 2935 Shepherd Grade Rd., Shepherdstown vicinity, SG100001902

**Wayne County**

Fort Gay High School, 675 Court St., Fort Gay, SG100001903

A request for removal has been made for the following resource:

**SOUTH DAKOTA****Pennington County**

Madison, Pap, Cabin, Bounded by W. Main St., St. Joseph St. & West Blvd., Rapid City, OT08000054

A request to move has been received for the following resources:

**UTAH****Salt Lake County**

Hawk, William, Cabin, 458 N. 3rd West, Salt Lake City, MV78002671

Additional documentation has been received for the following resource:

**KANSAS****Lincoln County**

Nielsen Farm, 1125 E. Pike Dr., Denmark vicinity, AD05001513

**Authority:** 60.13 of 36 CFR Part 60.

**Dated:** November 8, 2017.

**Christopher Hetzel,**

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2017-25506 Filed 11-24-17; 8:45 am]

**BILLING CODE 4312-52-P**

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-1062]

**Certain Backpack Chairs; Notice of a  
Commission Determination Not To  
Review an Initial Determination  
Terminating the Investigation Based  
on a Withdrawal of the Complaint;  
Termination of the Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 5) of the presiding administrative law judge (“ALJ”), granting a motion to terminate the above-captioned investigation in its entirety based on a withdrawal of the complaint.

**FOR FURTHER INFORMATION CONTACT:** Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 12, 2017, based on a complaint filed on behalf of Rio Brands, LLC of West Conshohocken, Pennsylvania. 82 FR 32199 (July 12, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of a claim of U.S. Patent No. RE 39,022. The complaint further alleges that a domestic industry exists. The Commission’s notice of investigation named CGI Outdoor, Inc. of Higganum, Connecticut, as respondent. The Office of Unfair Import Investigations did not participate in the investigation.

On October 27, 2017, Complainant filed a motion to terminate the investigation in its entirety under Commission Rule 210.21(a)(1), based on a withdrawal of the complaint. Order No. 5 at 1. Respondent submitted a response but did not oppose the motion to terminate. *Id.* at 1–2.

On November 6, 2017, the ALJ issued the subject ID granting the motion and terminating the investigation in its entirety. *Id.* at 3. The ALJ found that the motion complies with the Commission Rules and that termination of the investigation is not contrary to the public interest. *Id.* at 2. The ALJ also found that no extraordinary circumstances prevent termination of the investigation based on a withdrawal of the complaint. *Id.*

No petitions for review were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: November 21, 2017.

**Katherine M. Hiner,**  
*Supervisory Attorney.*

[FR Doc. 2017–25543 Filed 11–24–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–589 and 731–TA–1394–1396 (Preliminary)]**

### Determinations; Forged Steel Fittings From China, Italy, and Taiwan

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of forged steel fittings from China, Italy, and Taiwan, provided for in subheadings 7307.99.10, 7307.99.30, and 7307.99.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”) and to be subsidized by the government of China.

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (“Commerce”) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### Background

On October 5, 2017, Bonney Forge Corporation, Mount Union, Pennsylvania and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of forged steel fittings from China and LTFV imports of forged steel fittings from Italy and Taiwan. Accordingly, effective October 5, 2017, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–589 and antidumping duty investigation Nos. 731–TA–1394–1396 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the

**Federal Register** of October 12, 2017 (82 FR 47578). The conference was held in Washington, DC, on October 26, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 20, 2017. The views of the Commission are contained in USITC Publication 4743 (November 2017), entitled *Forged Steel Fittings from China, Italy, and Taiwan: Investigation Nos. 701–TA–589 and 731–TA–1394–1396 (Preliminary)*.

By order of the Commission.

Issued: November 20, 2017.

**Katherine M. Hiner,**  
*Supervisory Attorney.*

[FR Doc. 2017–25478 Filed 11–24–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–1085]**

### Certain Glucosylated Steviol Glycosides, and Products Containing Same 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 October 20, 2017, under the Tariff Act of 1930, as amended, on behalf of PureCircle USA Inc. of Oak Brook, Illinois and PureCircle Sdn Bhd of Malaysia. A supplement was filed on November 13, 2017. The complaint, as supplemented, alleges violations of the Tariff Act based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain glucosylated steviol glycosides, and products containing same by reason of infringement of U.S. Patent No. 9,420,815 (“the ’815 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained

therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2017).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on November 20, 2017, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain glucosylated steviol glycosides, and products containing same by reason of infringement of one or more of claims 1-14 of the '815 patent; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) 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:  
PureCircle USA Inc., 915 Harger Road, Suite 250, Oak Brook, IL 60523  
PureCircle Sdn Bhd, Level 12, West Wing, Rohas PureCircle, No. 9 Jalan P. Ramlee, 50250 Kuala Lumpur, Malaysia

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Sweet Green Fields USA LLC, 11 Bellwether Way, Suite 305, Bellingham, WA 98225

Sweet Green Fields Co., Ltd., 11 Bellwether Way, Suite 305, Bellingham, WA 98225

Ningbo Green-Health Pharma-ceutical Co., Ltd., a/k/a NB Green-Health Pharma-ceutical Co., Ltd., Fenghua Xiwu Town Foreign Technological Garden Fenghua, Zip Code: 315505, Ningbo, Zhejiang, China

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge. The Office of Unfair Import Investigations will not participate as a party in this investigation.

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: November 20, 2017.

**Katherine M. Hiner,**

*Supervisory Attorney.*

[FR Doc. 2017-25479 Filed 11-24-17; 8:45 am]

**BILLING CODE 7020-02-P**

**INTERNATIONAL TRADE COMMISSION**

[Investigation Nos. 701-TA-579-580 and 731-TA-1369-1372 (Final)]

**Fine Denier Polyester Staple Fiber From China, India, Korea, and Taiwan; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations**

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701-TA-579-580 and 731-TA-1369-1372 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fine denier polyester staple fiber ("fine denier PSF") from China, India, Korea, and Taiwan, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States. Imports of this product from China and India have been preliminarily determined by the Department of Commerce to be subsidized. Determinations with respect to imports of fine denier PSF alleged to be sold at less than fair value are pending.

**DATES:** November 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jordan Harriman (202-205-2610), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Scope.*—For purposes of these investigations, the Department of Commerce has defined the subject merchandise as, "fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3

decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bicomponent fiber with a polyester core and an outer, polyester sheath that melts at a significantly lower temperature than its inner polyester core currently classified under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.”

**Background.**—The final phase of these investigations is being scheduled pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and India of fine denier PSF. The investigations were requested in petitions filed on May 31, 2017, by DAK Americas LLC, Charlotte, NC; Nan Ya Plastics Corporation, America, Lake City, SC; and Auriga Polymers Inc., Charlotte, NC.

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

**Participation in the investigations and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission’s rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will

maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 3, 2018, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission’s rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Wednesday, January 17, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 11, 2018. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on January 12, 2018, at the U.S.

International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission’s rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission’s rules; the deadline for filing is January 10, 2018. Parties may

also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission’s rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission’s rules. The deadline for filing posthearing briefs is January 23, 2018. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 23, 2018. On February 9, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 13, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission’s rules. All written submissions must conform with the provisions of section 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on E-Filing*, available on the Commission’s Web site at <https://edis.usitc.gov>, elaborates upon the Commission’s rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission’s rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission’s rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission’s rules.

By order of the Commission.

Issued: November 21, 2017.

**Katherine M. Hiner,**  
Supervisory Attorney.

[FR Doc. 2017–25546 Filed 11–24–17; 8:45 am]

**BILLING CODE 7020–02–P**



**DEPARTMENT OF JUSTICE**

[OMB Number 1125-0003]

**Agency Information Collection Activities; Proposed Collection Comments Requested; Fee Waiver Request**

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until January 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 22041; telephone: (703) 305-0470. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Fee Waiver Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR-26A, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual submitting an appeal or motion to the Board of Immigration Appeals. Other: Attorneys and qualified representatives representing an alien in immigration proceedings before EOIR. Abstract: The information on the fee waiver request form is used by the Board of Immigration Appeals to determine whether the requisite fee for a motion or appeal will be waived due to an individual's financial situation.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that \$7,116 respondents will complete the form annually with an average of 1 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 7,116 hours. It is estimated that respondents will take 1 hour to complete the form.

*If additional information is required contact:* Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 21, 2017.

**Melody D. Braswell,**  
*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2017-25539 Filed 11-24-17; 8:45 am]

**BILLING CODE 4410-30-P**

**DEPARTMENT OF LABOR****Employment and Training Administration****Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance**

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) ("Act"), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act ("TAA") for workers by (TA-W) number issued during the period of *September 23, 2017 through October 20, 2017*. (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or "and," "or," or other words are added for clarification.)

**Section 222(a)—Workers of a Primary Firm**

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or "such firm") have become totally or partially separated, or are threatened to become totally or partially separated;  
AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) *Increased Imports Path:*

(i) the sales or production, or both, of such firm, have decreased absolutely;  
AND (ii and iii below)

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services

supplied by such firm, have increased;  
OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) *Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:*

(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

**Section 222(b)—Adversely Affected Secondary Workers**

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or

an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4)));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

**Section 222(e)—Firms Identified by the International Trade Commission**

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1));

OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
91,895	Jones Energy, Inc	Austin, TX	May 23, 2015.
92,076	SPX Heat Transfer, LLC, Power Segment, SPX Corporation	Tulsa, OK	July 29, 2015.
92,107	Keurig Green Mountain, Inc., Blacktree Technical Group, Manpower, Randstad Staffing, Westaff, etc.	Essex, VT	August 11, 2015.
92,107A	Keurig Green Mountain, Inc., Blacktree Technical Group, Manpower, Randstad Staffing, Westaff, etc.	Williston, VT	August 11, 2015.
92,256	Ball Corporation, Food and Aerosol Division, Manpower	Weirton, WV	September 30, 2016.
92,721	Nippon Paper Industries USA Co. Ltd, Daishowa North American Corp., Express Employment Professionals.	Port Angeles, WA	March 9, 2016.
92,949	FreightCar, Roanoke, LLC, FreightCar America, @Work Personnel Services, Chase Professionals, etc.	Roanoke, VA	June 13, 2016.
92,952	Eagle Family Foods Group LLC, Hire Advantage, Express Employment Professionals, Touches of Splendor.	Seneca, MO	June 14, 2016.

TA-W No.	Subject firm	Location	Impact date
93,069 .....	Callidus Technologies, LLC, Honeywell International, Inc., Securitas USA, JLL Americas.	Beggs, OK .....	August 10, 2016.
93,084 .....	Armstrong Hardwood Flooring Company, Armstrong Wood Products, Inc., Armstrong Flooring, Inc.	Jackson, TN .....	August 18, 2016.
93,107 .....	Quality Mold, Inc. dba Versitech, QM Holdings, Inc .....	Greenwich, OH .....	August 29, 2016.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
92,664 .....	Branded Entertainment Network, Inc., Corbis Corporation, Hudson Street Facility, etc.	New York, NY .....	February 22, 2016.
92,664A .....	Branded Entertainment Network, Inc., Corbis Corporation, Varick Street Facility, etc.	New York, NY .....	February 22, 2016.
92,678 .....	Burroughs Inc .....	Plymouth, MI .....	February 24, 2016.
92,697 .....	Felchar Manufacturing Corporation, Shop Vac Corporation, Eastern Temporaries, Adecco, 196 Corporate Drive.	Binghamton, NY .....	March 3, 2016.
92,697A .....	Felchar Manufacturing Corporation, Shop Vac Corporation, Eastern Temporaries, Adecco, 47-51 Pine Camp Drive.	Binghamton, NY .....	March 3, 2016.
92,911 .....	American Silk Mills LLC .....	Plains, PA .....	May 24, 2016.
92,971 .....	The Carlstar Group, LLC, Priority Workforce, Arrow Staffing .....	Ontario, CA .....	June 22, 2016.
92,984 .....	Bear Island White Birch LLC, BD White Birch Investment, LLC .....	Ashland, VA .....	June 30, 2016.
93,039 .....	Unum Group, Finance, EXL Services Holdings, Anaplan, KPMG, Price Waterhouse Coopers.	Chattanooga, TN .....	July 25, 2016.
93,049 .....	Ecoshel, Aroostook County Action Program (ACAP) .....	Ashland, ME .....	July 31, 2016.
93,076 .....	API Heat Transfer .....	Buffalo, NY .....	August 7, 2016.
93,077 .....	Fargo Assembly of Mississippi, LLC, Electrical Components International, Inc	Kosciusko, MS .....	August 16, 2016.
93,089 .....	Huntington Foam LLC, Huntington Solutions, Corporate Office, Contingent Resource Solutions, etc.	Jeannette, PA .....	August 21, 2016.
93,092 .....	St. Vincent Health, Inc., Financial Pre-Clearance Group, Ascension Health .....	Indianapolis, IN .....	August 18, 2016.
93,093 .....	International Business Machines (IBM) Systems & Technology, AIX System and Verification/Integrated System Software Test, 7T, etc.	Austin, TX .....	August 16, 2016.
93,095 .....	Vesuvius USA, Flow Control Division .....	Tyler, TX .....	August 24, 2016.
93,108 .....	Interplex Automation, Interplex Holdings, Tooling Group .....	Attleboro, MA .....	August 30, 2016.
93,112 .....	Kongsberg Automotive, Kongsberg Actuation, II, Fluid Transfer, Human Technologies, Staff Masters.	Easley, SC .....	September 1, 2016.
93,115 .....	Great-West Life & Annuity Insurance Company, GWL&A Financial Inc., Corestaff Services, Inc.	Greenwood Village, CO.	August 21, 2016.
93,117 .....	CoreLogic Solutions, LLC, Accounting-Collections, Staffmark Investment LLC, Xoriant.	Irvine, CA .....	September 6, 2016.
93,119 .....	Health Care Solutions at Home Inc., Regional Cash Posting Center, Lincare Holdings Inc.	Sharon, PA .....	September 6, 2016.
93,123 .....	Boehringer Ingelheim, ProUnlimited, YOH Services .....	Ridgefield, CT .....	September 7, 2016.
93,125 .....	Railtech Composites, Inc., Skyfold, Inc., Coryer Staffing .....	Plattsburgh, NY .....	September 7, 2016.
93,129 .....	Porter's Group Sumter LLC, Porter's Fab of Sumter .....	Sumter, SC .....	September 8, 2016.
93,131 .....	Lake Catherine Footwear, Munro & Company, Inc .....	Hot Springs, AR .....	September 11, 2016.
93,132 .....	American Made LLC dba US Liner Company, Harmony Plant, Callos Resources, Manpower.	Harmony, PA .....	September 8, 2016.
93,134 .....	HERE North America LLC, HERE Holding Corporation .....	Fargo, ND .....	September 12, 2016.
93,135 .....	Panasonic Eco Solutions Solar America, LLC, Panasonic Corporation of North America, BDI.	Salem, OR .....	September 12, 2016.
93,138 .....	Harman, Professional Solutions, Harman International Industries, Accountemps, etc.	South Jordan, UT .....	September 13, 2016.
93,138A .....	Harman, Professional Solutions, Harman International Industries, Inc .....	Northridge, CA .....	September 13, 2016.
93,141 .....	Lincare Inc., Regional Cash Posting Center, Lincare Holdings Inc .....	Spokane, WA .....	September 13, 2016.
93,144 .....	HSBC Technology and Services, USA (HTSU), HSBC Technology and Services (IT Division), HSBC North America, etc.	Buffalo, NY .....	September 15, 2016.
93,147 .....	APEM, Inc., APEM SAS, The Plus Company, Inc. ....	Haverhill, MA .....	September 18, 2016.
93,148 .....	H.B. Fuller Company, Global Finance, North American Shared Services, Credit and Collections, etc.	Vadnais Heights, MN ..	September 15, 2016.
93,149 .....	Health Care Service Corporation, Information Technology (Infrastructure) Services.	Helena, MT .....	September 15, 2016.
93,150 .....	Philips Electronics N.A. Corporation, Philips Medical Refurbished Systems, Koninklijke Philips N.V., etc.	Cleveland, OH .....	September 15, 2016.
93,151 .....	Thomson Reuters, Technology Development and Quality Assurance groups, Pontoon.	Boston, MA .....	September 18, 2016.
93,158 .....	Valpak Direct Marketing Systems, Inc., Content & Design Departments, SoloWorkforce, ASEC Group, Personiv, etc.	St. Petersburg, FL .....	September 19, 2016.
93,166 .....	Boca Raton Regional Center, TYCO, Johnson Controls, KForce, Robert Half ..	Boca Raton, FL .....	September 21, 2016.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
92,839 .....	Dura Automotive Systems, LLC, Furst Staffing, Manpower Group .....	Stockton, IL .....	April 25, 2016.
92,847 .....	Parkdale Mills, Inc., Plant 44, Parkdale America, LLC, Parkdale, Inc., Defender Services, Inc.	Williamston, NC .....	April 26, 2016.
93,054 .....	Ulbrich Solar Technologies, LLC, Ulbrich Solar Technologies, Inc., Express Services.	Hillsboro, OR .....	August 2, 2016.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
93,152 .....	ArcelorMittal Riverdale LLC, ArcelorMittal USA LLC, Adecco, Phoenix, KT Grant.	Riverdale, IL .....	September 29, 2015.
93,157 .....	Nucor Corporation, Nucor Steel Arkansas Division .....	Blytheville, AR .....	September 29, 2015.
93,160 .....	EVRAZ Oregon Steel, Rolling Facility, EVRAZ Inc. NA, EVRAZ North America PLC, etc.	Portland, OR .....	September 29, 2015.
93,170 .....	SSAB Iowa, Inc., SSAB Enterprises, LLC, LPW-I, JW Koehler Electric Inc .....	Muscatine, IA .....	September 29, 2015.

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility

criteria for TAA have not been met for the reasons specified. The investigation revealed that the requirements of Trade Act section 222 (a)(1) and (b)(1) (significant worker

total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA-W No.	Subject firm	Location	Impact date
93,047 .....	Trine Aspects, Limited .....	New York, NY.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or

acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are

certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
92,611 .....	Tektronix, Inc., Adecco .....	Beaverton, OR.	
92,945 .....	APL Logistics Warehouse Management Services, Inc., Progress Rail .....	Hodgkins, IL.	
92,995 .....	Dell Products, L.P., Research and Development, Networking Test Engineering, etc.	Round Rock, TX.	
93,110 .....	Encap Technologies, Inc., Production Workers .....	Palatine, IL.	
93,113 .....	North East Foundry, Inc. dba REMMCO Inc .....	North East, PA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or

services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply

for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
92,611 .....	Tektronix, Inc., Adecco .....	Beaverton, OR.	
92,945 .....	APL Logistics Warehouse Management Services, Inc., Progress Rail .....	Hodgkins, IL.	
92,995 .....	Dell Products, L.P., Research and Development, Networking Test Engineering, etc.	Round Rock, TX,	
93,110 .....	Encap Technologies, Inc., Production Workers .....	Palatine, IL.	
93,113 .....	North East Foundry, Inc. dba REMMCO Inc .....	North East, PA.	

**Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and

on the Department’s Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

TA–W No.	Subject firm	Location	Impact date
92,450 .....	Impresa Aerospace LLC .....	Wichita, KS.	
92,958 .....	Alamac Investors LLC, Alamac American Knits .....	Lumberton, NC.	

The following determinations terminating investigations were issued because the worker group on whose

behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
92,959 .....	ASG Technologies Group, Inc .....	Phoenix, AZ.	
93,101 .....	Electrofilm Manufacturing Company LLC, EnviroTech LLC, Aerotek Commercial Staffing, Ronin Staffing LLC, etc.	Valencia, CA.	
93,105 .....	M+W US, Inc .....	Plano, TX.	

The following determinations terminating investigations were issued because the petitioning group of

workers is covered by an earlier petition that is the subject of an ongoing

investigation for which a determination has not yet been issued.

TA–W No.	Subject firm	Location	Impact date
93,220 .....	Country Curtains, Fitzpatrick Companies .....	Richmond, VA.	

I hereby certify that the aforementioned determinations were issued during the period of *September 23, 2017 through October 20, 2017*. These determinations are available on the Department’s Web site [https://www.doleta.gov/tradeact/taa/taa\\_search\\_form.cfm](https://www.doleta.gov/tradeact/taa/taa_search_form.cfm) under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 27th day of October 2017.

**Hope D. Kinglock,**  
*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2017–25515 Filed 11–24–17; 8:45 am]

**BILLING CODE 4510–FN–P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (“the Act”) and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than December 7, 2017.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 7, 2017.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of October 2017.

**Hope D. Kinglock,**  
*Certifying Officer, Office of Trade Adjustment Assistance.*

**APPENDIX**

[73 TAA petitions instituted between 9/23/17 and 10/20/17]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93167 .....	HCP Davita Medical Management LLC (State/One-Stop) .....	Denver, CO .....	09/25/17	09/22/17

## APPENDIX—Continued

[73 TAA petitions instituted between 9/23/17 and 10/20/17]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93168	Manpower on-site at IBM (State/One-Stop)	Boulder, CO	09/25/17	09/22/17
93169	Putnam Company, Inc. (Company)	Walworth, WI	09/25/17	09/22/17
93170	SSAB Iowa, Inc. (State/One-Stop)	Muscataine, IA	09/25/17	09/22/17
93171	Convergys (Workers)	Tamarac, FL	09/26/17	09/02/17
93172	General Foam Plastics Corp. Headquarter (State/One-Stop)	Virginia Beach, VA	09/26/17	09/26/17
93173	Itron (Workers)	Owenton, KY	09/26/17	09/14/17
93174	Total System Services, Inc., (TSYS) (Workers)	Boise, ID	09/27/17	09/08/17
93175	Del Monte Foods, Inc. (State/One-Stop)	Siloam Springs, AR	09/28/17	09/27/17
93176	Microsoft Corporation (Workers)	Wilsonville, OR	09/28/17	09/27/17
93177	Sutherland Global Services (State/One-Stop)	Rochester, NY	09/28/17	09/27/17
93178	AK Steel Corporation—Butler Works (State/One-Stop)	Butler, PA	09/29/17	09/28/17
93179	AK Steel (State/One-Stop)	Middletown, OH	09/29/17	09/28/17
93180	ArcelorMittal USA (State/One-Stop)	Cleveland, OH	09/29/17	09/28/17
93181	Bank of America (State/One-Stop)	Simi Valley, CA	09/29/17	09/28/17
93182	NLMK (Top Gun) (State/One-Stop)	Sharon, PA	09/29/17	09/28/17
93183	North Star BlueScope (State/One-Stop)	Delta, OH	09/29/17	09/28/17
93184	United States Steel Corporation (State/One-Stop)	West Mifflin, PA	09/29/17	09/28/17
93185	EVRAZ Oregon Steel Mill (Spiral Pipe Mill) (State/One-Stop)	Portland, OR	10/02/17	09/29/17
93186	Faurecia (Union)	Fraser, MI	10/02/17	09/29/17
93187	Faurecia (Union)	Sterling Heights, MI	10/02/17	09/29/17
93188	Faurecia (Union)	Fraser, MI	10/02/17	09/29/17
93189	Faurecia (Union)	Sterling Heights, MI	10/02/17	09/29/17
93190	Kellogg Rossville Eggo Plant (State/One-Stop)	Rossville, TN	10/02/17	09/29/17
93191	Kellogg Snack (State/One-Stop)	Memphis, TN	10/02/17	09/29/17
93192	Oracle (1 Pierce Place, Itasca, IL) (State/One-Stop)	Itasca, IL	10/02/17	09/28/17
93193	Sony Corp Of America (State/One-Stop)	Park Ridge, NJ	10/02/17	09/29/17
93194	Voya Financial (State/One-Stop)	Windsor, CT	10/02/17	10/02/17
93195	American Home Patient, Inc. (Workers)	Philipsburg, PA	10/03/17	09/22/17
93196	Hearth and Home Technologies (State/One-Stop)	Colville, WA	10/03/17	09/28/17
93197	The Fitzpatrick Companies Inc. DBA Country Curtains Inc. and Housatonic Cur (State/One-Stop).	Lee, MA	10/03/17	10/03/17
93198	IBM—GTS—GSAM Relationship and Problem Management (State/One-Stop).	Seattle, WA	10/03/17	09/25/17
93199	North Pacific Paper Company LLC. (Norpac) (State/One-Stop).	Longview, WA	10/03/17	10/02/17
93200	Reebok International (State/One-Stop)	Canton, MA	10/03/17	10/03/17
93201	SCA AfH Professional Hygiene (Union)	Flagstaff, AZ	10/03/17	09/21/17
93202	DexYP (Workers)	Tucker, GA	10/04/17	10/03/17
93203	Emcore Corporation (State/One-Stop)	Alhambra, CA	10/04/17	10/03/17
93204	Plews, Inc. (dba Plews & Edlemann) (Company)	Dixon, IL	10/04/17	10/03/17
93205	Lockheed Martin Commercial Engine Solutions (State/One-Stop).	San Antonio, TX	10/05/17	10/04/17
93206	Powerex, Inc. (Company)	Youngwood, PA	10/05/17	10/04/17
93207	Sohnen Enterprises Inc. (State/One-Stop)	Santa Fe, CA	10/05/17	10/04/17
93208	Deufol Sunman (State/One-Stop)	Sunman, IN	10/06/17	10/04/17
93209	Fiserv Solutions, LLC (Workers)	Walnut, CA	10/06/17	10/05/17
93210	Augusta Sportswear (State/One-Stop)	Grovetown, GA	10/06/17	10/05/17
93211	Huntsman P&A Americas LLC/Venator Corporation (State/One-Stop).	St. Louis, MO	10/06/17	10/05/17
93212	Northwestern Mutual (State/One-Stop)	Franklin, WI	10/06/17	10/05/17
93213	Windstream Corporation (State/One-Stop)	Vancouver, WA	10/06/17	10/04/17
93214	Emerson Automation Solutions, Actuation Technologies (Company).	Pelham, AL	10/11/17	10/09/17
93215	NSi Industries LLC (State/One-Stop)	Mount Vernon, NY	10/11/17	10/06/17
93216	Pharmaceutics International, Inc. (Pii) (State/One-Stop)	Hunt Valley, MD	10/11/17	10/06/17
93217	Unlimited Seams Industrial Services (State/One-Stop)	Pulaski, TN	10/11/17	10/06/17
93218	Xerox (State/One-Stop)	Norwalk, CT	10/11/17	10/06/17
93219	Atwood Automotive (State/One-Stop)	Stockton, IL	10/12/17	10/10/17
93220	Country Curtains (State/One-Stop)	Richmond, VA	10/12/17	10/10/17
93221	MD Electronics Corporation (State/One-Stop)	Jamestown, NY	10/12/17	10/10/17
93222	Nokia (State/One-Stop)	Murray Hill, NJ	10/12/17	10/10/17
93223	Saint Gobain (State/One-Stop)	Fort Smith, AR	10/12/17	10/10/17
93224	Superior Industries International, Inc. (State/One-Stop)	Rogers, AR	10/12/17	10/10/17
93225	Automated Data Processing Inc. (State/One-Stop)	Lynwood, WA	10/13/17	10/11/17
93226	LEAR (Union)	Southfield, MI	10/13/17	10/12/17
93227	Umicore Thin Film Products (State/One-Stop)	Providence, RI	10/13/17	10/11/17
93228	Brooks Automation Inc. (State/One-Stop)	Poway, CA	10/16/17	10/12/17
93229	CenturyLink (Workers)	Carlisle, PA	10/16/17	10/13/17
93230	BP United States (State/One-Stop)	Naperville, IL	10/17/17	10/13/17
93231	Bush Industries, Inc. (Company)	Jamestown, NY	10/17/17	10/13/17

## APPENDIX—Continued

[73 TAA petitions instituted between 9/23/17 and 10/20/17]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93232	JD Norman Industries (State/One-Stop)	Brooklyn, OH	10/17/17	10/13/17
93233	Commercial Sewing, Inc. (Company)	Phillipsburg, MO	10/18/17	10/17/17
93234	Knight LLC. (State/One-Stop)	Irvine, CA	10/18/17	10/16/17
93235	Gruma Corporation DBA: Mission Foods and Azteca Milling (State/One-Stop).	Irving, TX	10/19/17	10/17/17
93236	RotaDyne Molded Products (State/One-Stop)	Chicago, IL	10/19/17	10/17/17
93237	A.L. Lee Corporation (Union)	Lester, WV	10/20/17	10/18/17
93238	Appleton Coated LLC (Union)	Combined Locks, WI	10/20/17	10/16/17
93239	Kalmar Rough Terrain Center, LLC a Subsidiary of Cargotec (State/One-Stop).	Cibolo, TX	10/20/17	10/18/17

[FR Doc. 2017–25530 Filed 11–24–17; 8:45 am]

BILLING CODE 4510–FN–P

## THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

#### Notice of Proposed Information Collection Requests: 2019–2021 IMLS National Medals Nomination Forms

**AGENCY:** Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

**ACTION:** Notice, request for comments on this collection of information.

**SUMMARY:** The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning the annual IMLS National Medals Program is designed to recognize outstanding libraries and museums that have made significant contributions in service to improve the wellbeing of their communities.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the

addressee section below on or before January 23, 2018.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Send comments to: Dr. Sandra Webb, Senior Advisor, Office of the Director, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at [swebb@imls.gov](mailto:swebb@imls.gov), or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's approximately 120,000 libraries and 35,000 museums and related organizations. Our mission is to inspire libraries and museums to advance innovation, lifelong learning, and cultural and civic engagement. Our grant making, policy development, and research help libraries and museums deliver valuable services that make it

possible for communities and individuals to thrive. To learn more, visit [www.imls.gov](http://www.imls.gov).

##### II. Current Actions

The annual IMLS National Medals Program is designed to recognize outstanding libraries and museums that have made significant contributions in service to improve the wellbeing of their communities. IMLS is interested in museum and library programs that build community cohesion and serve as a catalyst for positive community change, including services for veterans and military families, at-risk children and families, the un- and under-employed, and youth confronting barriers to STEM-related employment. Selected institutions demonstrate extraordinary approaches to serving their constituents; they exceed expected levels of community outreach. These organizations have established themselves as community anchor institutions. Recipient institutions are honored at an awards ceremony that is held in Washington, DC.

*Agency:* Institute of Museum and Library Services.

*Title:* National Medals Program Nomination Forms.

*OMB Number:* 3137–0097.

*Frequency:* Once per year.

*Affected Public:* Library and Museum applicants.

*Number of Respondents:* 159.

*Estimated Average Burden per Response:* 9 hours.

*Estimated Total Annual Burden:* 1,444 hours.

*Total Annualized capital/startup costs:* n/a.

*Total Annual costs:* \$40,338.

*Public Comments Invited:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra Webb, Senior Advisor, Office of

the Director, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024-2135. Dr. Webb can be reached by Telephone: 202-653-4718 Fax: 202-653-4608, or by email at [swebb@imls.gov](mailto:swebb@imls.gov), or by teletype (TTY/TDD) for persons with hearing difficulty at 202-653-4614.

Dated: November 20, 2017.

**Kim Miller,**

*Grants Management Specialist, Office of Chief Information Officer.*

[FR Doc. 2017-25448 Filed 11-24-17; 8:45 am]

**BILLING CODE 7036-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2017-0180]

### Information Collection: Voluntary Reporting of Planned New Reactor Applications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "Voluntary Reporting of Planned New Reactor Applications."

**DATES:** Submit comments by January 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

### FOR FURTHER INFORMATION CONTACT:

David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2017-0180 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0180.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML17200C870. The supporting statement is available in ADAMS under Accession No. ML17200C871.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

##### B. Submitting Comments

Please include Docket ID NRC-2017-0180 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not

want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

#### II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the Office of Management and Budget's (OMB) approval for the information collection summarized below.

1. *The title of the information collection:* Voluntary Reporting of Planned New Reactor Applications.
2. *OMB approval number:* 3150-0228.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not Applicable.
5. *How often the collection is required or requested:* Annually.
6. *Who will be required or asked to respond:* Applicants, licensees, and potential applicants report this information on a strictly voluntary basis.
7. *The estimated number of annual responses:* 5.
8. *The estimated number of annual respondents:* 5.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 60.

10. *Abstract:* This voluntary information collection assists the NRC in determining resource and budget needs as well as aligning the proper allocation and utilization of resources to support applicant submittals, future construction-related activities, and other anticipated part 50 and/or part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) licensing and design certification rulemaking actions. In addition, information provided to the NRC staff is intended to promote early communications between the NRC and the respective addressees about potential 10 CFR part 50 and/or part 52



licensing actions and related activities, submission dates, and plans for construction and inspection activities. The overarching goal of this information collection is to assist the NRC staff more effectively and efficiently plan, schedule, and implement activities and reviews in a timely manner.

### III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 20th day of November 2017.

For the Nuclear Regulatory Commission.

**David Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2017-25513 Filed 11-24-17; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285; NRC-2017-0223]

### Omaha Public Power District; Fort Calhoun Station, Unit No. 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions in response to a request from Omaha Public Power District (OPPD or the licensee) that would permit the licensee to reduce its emergency planning (EP) activities at the Fort Calhoun Station, Unit No. 1 (Fort Calhoun). The licensee is seeking exemptions that would eliminate the requirements for the licensee to maintain formal offsite radiological emergency plans, and reduce some of the onsite EP activities, based on the reduced risks at Fort Calhoun, which is permanently shutdown and defueled. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response

authorities, in the event of an emergency at Fort Calhoun, would be retained. The NRC staff is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed exemptions.

**DATES:** The EA and FONSI referenced in this document are available on November 27, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2017-0223 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0223. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** James Kim, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4125; email: [James.Kim@nrc.gov](mailto:James.Kim@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

Fort Calhoun is a permanently shutdown and defueled nuclear power plant, located in Washington County, Nebraska, which is in the process of decommissioning. The licensee is the holder of Renewed Facility Operating License No. DPR-40 for operation of Fort Calhoun. Fort Calhoun has been shut down since October 24, 2016, and

the final removal of fuel from its reactor vessel was completed on November 13, 2016. By letter dated November 13, 2016, OPPD submitted to the NRC a certification of the permanent cessation of power operations at Fort Calhoun and the permanent removal of fuel from the Fort Calhoun reactor vessel. As a permanently shutdown and defueled facility, and pursuant to section 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), Fort Calhoun is no longer authorized to be operated or to have fuel placed into its reactor vessel. However, the licensee is still authorized to possess and store irradiated nuclear fuel, which is currently stored onsite at Fort Calhoun in a spent fuel pool and in an independent spent fuel storage installation.

The licensee has requested exemptions for Fort Calhoun from certain EP requirements in 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities." The NRC regulations concerning EP do not recognize the reduced risks after a reactor is permanently shut down and defueled. As such, a permanently shutdown and defueled reactor such as Fort Calhoun must continue to maintain the same EP requirements as an operating power reactor under the existing regulatory requirements. To establish a level of EP commensurate with the reduced risks of a permanently shutdown and defueled reactor, OPPD requires exemptions from certain EP regulatory requirements before it can change its emergency plans.

The NRC is considering issuing exemptions from portions of 10 CFR 50.47, "Emergency plans," and 10 CFR part 50, appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to OPPD, which would eliminate the requirements for OPPD to maintain offsite radiological emergency plans and reduce some of the onsite EP activities, based on the reduced risks at Fort Calhoun, due to its permanently shutdown and defueled status. Consistent with 10 CFR 51.21, the NRC has reviewed the requirements in 10 CFR 51.20(b) and 10 CFR 51.22(c) and determined that an EA is the appropriate form of environmental review for the requested action. Based on the results of the EA, which is provided in Section II of this document, the NRC has determined not to prepare an environmental impact statement for the proposed action, and is issuing a FONSI.

## II. Environmental Assessment

### *Description of the Proposed Action*

The proposed action would exempt OPPD from meeting certain requirements set forth in 10 CFR 50.47 and appendix E to 10 CFR part 50. More specifically, OPPD requested exemptions from: (1) Certain requirements in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; (2) certain requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway emergency planning zones for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of a licensee's emergency plan. The proposed action of granting these exemptions would eliminate the requirements for OPPD to maintain formal offsite radiological emergency plans, as described in 44 CFR part 350, and reduce some of the onsite EP activities at Fort Calhoun, based on the reduced risks at the permanently shutdown and defueled reactor. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities, in the event of an emergency at Fort Calhoun, would be retained. Additionally, if necessary, offsite protective actions could still be implemented using a comprehensive emergency management plan (CEMP) process. A CEMP in this context, also referred to as an emergency operations plan, is addressed in the Federal Emergency Management Agency's Comprehensive Preparedness Guide (CPG) 101. The CPG 101 is the foundation for State, territorial, Tribal, and local EP in the United States. It promotes a common understanding of the fundamentals of risk-informed planning and decision making, and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An emergency operations plan is flexible enough for use in all emergencies. It describes how people and property will be protected; details regarding who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies, and other resources available; and outlines the process by which all actions will be coordinated. A CEMP is often referred to as a synonym for "all-hazards planning."

The proposed action is in accordance with the licensee's application dated December 16, 2016, as supplemented by letters dated February 10, April 14, and

April 20, 2017, in which OPPD provided responses to the NRC staff's requests for additional information concerning the proposed exemptions.

### *Need for the Proposed Action*

The proposed action is needed for OPPD to revise Fort Calhoun's Emergency Plan to reflect the permanently shutdown and defueled status of the facility. The EP requirements currently applicable to Fort Calhoun are for an operating power reactor. There are no explicit regulatory provisions distinguishing EP requirements for a power reactor that has been permanently shut down and defueled, from those for an operating power reactor. Therefore, since the 10 CFR part 50 license for Fort Calhoun no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible.

In its exemption request, the licensee identified the remaining possible accidents at Fort Calhoun in its permanently shutdown and defueled condition. The NRC staff evaluated these possible radiological accidents, as memorialized in the Commission Paper (SECY)-17-0080, "Request by the Omaha Public Power District for Exemptions from Certain Emergency Planning Requirements for the Fort Calhoun Station, Unit No. 1," dated August 10, 2017. In SECY-17-0080, the NRC staff stated that it had verified that OPPD's analyses and calculations provided reasonable assurance that if the requested exemptions were granted, then: (1) For a design-basis accident, an offsite radiological release will not exceed the U.S. Environmental Protection Agency's Protective Action Guides (PAGs) at the exclusion area boundary, as detailed in the Environmental Protection Agency "PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents," January 2017; and (2) in the unlikely event of a beyond design-basis accident, resulting in a loss of all spent fuel pool cooling, there is sufficient time to initiate appropriate mitigating actions on site and, if a release is projected to occur, there is sufficient time for offsite agencies to take protective actions using a CEMP to protect the public health and safety. The Commission approved the NRC staff's recommendation to grant the exemptions, based on this evaluation in its Staff Requirements Memorandum (SRM) to SECY-17-0080, dated October 25, 2017.

Based on these analyses, the licensee stated that complete application of the

EP rule to Fort Calhoun, in its particular circumstances as a permanently shutdown and defueled reactor, would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The licensee also stated that it would incur undue costs in the application of operating plant EP requirements for the maintenance of an emergency response organization in excess of that actually needed to respond to the diminished scope of credible accidents for a permanently shutdown and defueled reactor.

### *Environmental Impacts of the Proposed Action*

Based on the conclusions reached in SECY-17-0080, the NRC staff concludes that the exemptions, if granted, would not significantly increase the probability or consequences of accidents at Fort Calhoun in its permanently shutdown and defueled condition. There would be no significant change in the types of any effluents that may be released offsite. There would be no significant increase in the amounts of any effluents that may be released offsite. There would be no significant increase in individual or cumulative occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are no known socioeconomic or environmental justice impacts associated with the proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.*, the "no-action" alternative). The denial of the proposed action would not result in a change to the current environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

### *Alternative Use of Resources*

The proposed action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Fort

Calhoun Station, Unit No. 1 dated August 1972 as supplemented through the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Fort Calhoun Station Unit 1—Final Report (NUREG–1437, Supplement 12).”

*Agencies or Persons Consulted*

The NRC staff did not enter into consultation with any other Federal agency or with the State of Nebraska regarding the environmental impact of the proposed action. On October 5, 2017, the Nebraska state representative was notified of this EA and FONSI.

**III. Finding of No Significant Impact**

The licensee has proposed exemptions from: (1) Certain requirements in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power

reactors; (2) certain requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway emergency planning zones for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of a licensee’s emergency plan. The proposed action of granting these exemptions would eliminate the requirements for the licensee to maintain formal offsite radiological emergency plans, as described in 44 CFR part 350, and reduce some of the onsite EP activities at Fort Calhoun, based on the reduced risks at the permanently shutdown and defueled reactor. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities following declaration of an emergency at Fort

Calhoun will be retained and offsite “all hazards” EP provisions will still exist through State and local government use of a CEMP.

Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, which is included in Section II of this document, and incorporated by reference in this finding. On the basis of this EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has decided not to prepare an environmental impact statement for the proposed action.

**IV. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./Web link
Developing and Maintaining Emergency Operations Plans, Comprehensive Preparedness Guide (CPG) 101, Version 2.0, November 2010.	<a href="http://www.fema.gov/pdf/about/divisions/npd/CPG_101_V2.pdf">http://www.fema.gov/pdf/about/divisions/npd/CPG_101_V2.pdf</a> .
Docket No. 50–285, Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR Part 50, Appendix E, dated December 16, 2016.	ADAMS Accession No. ML16356A578.
Docket No. 50–285, Supplemental Information Needed For Acceptance of Requested Licensing Action RE: Fort Calhoun Station Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR Part 50, Appendix E, dated February 10, 2017.	ADAMS Accession No. ML17041A443.
Docket No. 50–285, Response to Request for Additional Information, Fort Calhoun Station, Unit No. 1—Final Request for Additional Information Concerning Exemption from the Requirements of 10 CFR 50.47 and Appendix E, dated April 14, 2017.	ADAMS Accession No. ML17104A191.
Docket No. 50–285, Response to Request for Additional Information, Fort Calhoun Station, Unit No. 1—Request for Additional Information RE: Defueled Emergency Plan Exemption Request, dated April 20, 2017.	ADAMS Accession No. ML17111A857.
PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents, U.S. Environmental Protection Agency, January 2017.	ADAMS Accession No. ML17044A073.
SECY–17–0080, “Request by the Omaha Public Power District for Exemptions from Certain Emergency Planning Requirements for the Fort Calhoun Station, Unit No. 1,” dated August 10, 2017.	ADAMS Accession No. ML17116A430.
Staff Requirements Memorandum to SECY–17–0080, dated October 25, 2017 .....	ADAMS Accession No. ML17298A976.
Staff Requirements Memorandum to SECY–08–0024, “Delegation of Commission Authority to Staff to Approve or Deny Emergency Plan Changes that Represent a Decrease in Effectiveness,” dated May 19, 2008.	ADAMS Accession No. ML081400510.
NUREG–1437, Supplement 12, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Fort Calhoun Station Unit 1,” August 2003.	ADAMS Accession No. ML032110191.

Dated at Rockville, Maryland, this 21st day of November, 2017.

For the Nuclear Regulatory Commission.

**Glenn E. Miller,**

*Acting Chief, Special Projects and Process Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2017–25561 Filed 11–24–17; 8:45 am]

**BILLING CODE 7590–01–P**

**NUCLEAR REGULATORY COMMISSION**

**[NRC–2017–0069]**

**Information Collection: Voluntary Reporting of Performance Indicators**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information

collection is entitled, “Voluntary Reporting of Performance Indicators.”

**DATES:** Submit comments by December 27, 2017.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Brandon F. DeBruhl, Desk Officer, Office of Information and Regulatory Affairs (3150–0195), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–0710, email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Obtaining Information and Submitting Comments****A. Obtaining Information**

Please refer to Docket ID: NRC-2017-0069 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 Web site:* Go to <http://www.regulations.gov> and search for Docket ID: NRC-2017-0069.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession: No. ML17229B232. The supporting statement is available in ADAMS under Accession: No. ML17229B268.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

**B. Submitting Comments**

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be

publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

**II. Background**

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Voluntary Reporting of Performance Indicators." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 8, 2017, 82 FR 37132.

1. *The title of the information collection:* "Voluntary Reporting of Performance Indicators."
2. *OMB approval number:* 3150-0195.
3. *Type of submission:* Extension.
4. *The form number if applicable:* N/A.
5. *How often the collection is required or requested:* Quarterly.
6. *Who will be required or asked to respond:* Power reactor licensees.
7. *The estimated number of annual responses:* 376.
8. *The estimated number of annual respondents:* 94.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* The total reporting and recordkeeping burden is 76,350 hours (75,200 hours of reporting and 1,150 hours of recordkeeping).

10. *Abstract:* As part of a joint industry-NRC initiative, the NRC receives information submitted voluntarily by power reactor licensees regarding selected performance attributes known as performance indicators (PIs). Performance indicators are objective measures of the performance of licensee systems or programs. The NRC uses PI information and inspection results in its Reactor Oversight Process to make decisions about plant performance and regulatory response. Licensees transmit PIs electronically to reduce burden on themselves and the NRC.

Dated at Rockville, Maryland, this 20th day of November 2017.

For the Nuclear Regulatory Commission.

**David Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2017-25514 Filed 11-24-17; 8:45 am]

**BILLING CODE 7590-01-P**

**POSTAL REGULATORY COMMISSION**

[Docket Nos. CP2017-280; CP2018-56; CP2018-57; MC2018-29 and CP2018-58; CP2018-59; R2018-2]

**New Postal Products**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* November 27, 2017 (Comment due date applies to R2018-2); November 29, 2017 (Comment due date applies to CP2017-280; CP2018-56; CP2018-57; MC2018-29 and CP2018-58; CP2018-59).

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

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

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each

request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s)*.: CP2017–280; *Filing Title*: USPS Notice of Change in Prices Pursuant to Amendment to Priority Mail Contract 344; *Filing Acceptance Date*: November 17, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Katalin K. Clendenin; *Comments Due*: November 29, 2017.

2. *Docket No(s)*.: CP2018–56; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 9 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: November 17, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Timothy J. Schwuchow; *Comments Due*: November 29, 2017.

3. *Docket No(s)*.: CP2018–57; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 9 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: November 17, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Timothy J. Schwuchow; *Comments Due*: November 29, 2017.

4. *Docket No(s)*.: MC2018–29 and CP2018–58; *Filing Title*: USPS Request

to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 27 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 17, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Michael L. Leibert; *Comments Due*: November 29, 2017.

5. *Docket No(s)*.: CP2018–59; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date*: November 17, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Michael L. Leibert; *Comments Due*: November 29, 2017.

6. *Docket No(s)*.: R2018–2; *Filing Title*: Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement; *Filing Acceptance Date*: November 17, 2017; *Filing Authority*: 39 CFR 3010.40 *et seq.*; *Public Representative*: Katalin K. Clendenin; *Comments Due*: November 27, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble**,  
*Secretary*.

[FR Doc. 2017–25445 Filed 11–24–17; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

**AGENCY**: Postal Service™.

**ACTION**: Notice.

**SUMMARY**: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES**: *Date of notice required under 39 U.S.C. 3642(d)(1)*: November 27, 2017.

**FOR FURTHER INFORMATION CONTACT**: Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION**: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 20, 2017, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 28 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2018–30, CP2018–60.

**Elizabeth A. Reed**,

*Attorney, Corporate and Postal Business Law*.  
[FR Doc. 2017–25455 Filed 11–24–17; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE**: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Commission will host the SEC Government-Business Forum on Small Business Capital Formation on Thursday, November 30, 2017, beginning at 9:00 a.m. Central Time.

**PLACE**: The forum will be held at the AT&T Executive Education and Conference Center on the campus of The University of Texas at Austin, 1900 University Ave., Austin, TX 78705.

**STATUS**: This meeting will be open to the public.

**MATTERS TO BE CONSIDERED**: The forum will be open to the public and will include remarks by SEC Commissioners and a panel discussion that Commissioners may attend. The panel discussion will explore how capital formation options are working for small businesses, including small businesses in Texas. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

**CONTACT PERSON FOR MORE INFORMATION**: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 22, 2017.

**Brent J. Fields**,  
*Secretary*.

[FR Doc. 2017–25700 Filed 11–22–17; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82123; File No. SR-CboeBZX-2017-001]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Its Director Nomination and Committee Appointment Process and Its Nominating and Governance Committee

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 14, 2017, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its governance documents with respect to changes relating to its director nomination and committee appointment process and its Nominating and Governance Committee.

The text of the proposed rule change is available at the Exchange’s Web site at [www.bats.com](http://www.bats.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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its Bylaws and Certificate. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee (“N&G Committee”), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to make other technical, non-substantive changes.

##### Elimination of Nominating and Governance Committee

##### (a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.<sup>3</sup> Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the Representative Directors. If however, there are less than two Industry Directors on the N&G Committee, then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body.<sup>4</sup> The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.<sup>5</sup> Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee,

<sup>3</sup> Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

<sup>4</sup> See Sections 1.1(j) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

<sup>5</sup> See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors (“Representative Directors”) as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.<sup>6</sup> With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of “Representative Director Nominating Body” and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. Additionally, similar to the current practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board, is final. There are no other changes with respect to the process for the nomination and selection Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange’s use of self-regulatory authority.

<sup>6</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**(b) Committee Appointments**

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the Regulatory Oversight Committee (“ROC”) are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate references to the N&G Committee with respect to committee appointments and transfer the N&G’s current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. The Exchange notes that Boards of other Exchanges also have authority to appoint Board Committees.<sup>7</sup>

**Filling of Director Vacancies**

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating

Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the Representative Director Nominating Body’s nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

**Technical, Non-Substantive Changes**

Lastly, the Exchange proposes to change the Exchange’s name in the title and signature line in its Certificate from “Bats BZX Exchange, Inc.” to “Cboe BZX Exchange, Inc.” The Exchange notes that it recently changed its legal name, but was unable to update the Exchange’s name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that proposed the name changes that it would later amend the Certificate to reflect the new name in the title and signature line and the Exchange is seeking to do so now. The Exchange also proposes to make clarifying amendments and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed restatement and amendment.

**2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>11</sup> of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange’s governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange’s Board including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange

<sup>7</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5–3.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78f(b)(3).

similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.<sup>12</sup> Other Exchanges also provide that their Board, without input from a nominating committee, appoint members to committees.<sup>13</sup> The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect) directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

Lastly, the Exchange believes the clarifying changes to the Exchange's Certificate, including updating the Exchange's name in the title and signature line, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

<sup>12</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>13</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2017-001 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-CboeBZX-2017-001. 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 Web site (<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 Web site 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-CboeBZX-2017-001, and should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-25468 Filed 11-24-17; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82132; File No. SR-ISE-2017-100]

### **Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Directed Order Functionality**

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to remove Directed Order<sup>3</sup> functionality on ISE.

The text of the proposed rule change is available on the Exchange's Web site 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**

Last year the Exchange filed to delay the implementation of the Directed Order functionality in conjunction with a replatform to INET.<sup>4</sup> INET is the proprietary core technology utilized across Nasdaq's global markets and utilized on The Nasdaq Options Market LLC ("NOM"), Nasdaq PHLX LLC ("Phlx") and Nasdaq BX, Inc. ("BX") (collectively, "Nasdaq Exchanges"). ISE was migrated to INET technology in 2017. With the migration, ISE delayed the implementation of the Directed Order functionality to stage the replatform to provide maximum benefit to its Members while also ensuring a successful rollout. At that time, the Exchange noted that the Exchange will introduce the Directed Order functionality within one year from the date of this filing, otherwise the Exchange will file a rule proposal with the Commission to remove these rules. The Exchange filed the initial rule

<sup>3</sup> A "Directed Order" is an order routed from an Electronic Access Member to an Exchange market maker through the Exchange's System.

<sup>4</sup> See Securities Exchange Act Release No. 80100 (February 24, 2017), 82 FR 12269 (March 1, 2017) (SR-ISE-2017-15).

change on February 23, 2017.<sup>5</sup> The Exchange has determined at this time not to offer Directed Order functionality. If the Exchange determines to offer this functionality at a later date a rule proposal will be filed at that time.

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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 because the Exchange will remove rule text related to functionality which will not be offered on ISE. The current rule text indicates the functionality is not offered today. The Exchange believes that removing Rule 811 from the Rulebook will avoid confusion as to whether this functionality will be enabled in the future.

#### *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 Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because the Exchange is not offering this functionality today and believes there is no interest among Members for this functionality.

#### *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 foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-100 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-100. 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 Web site (<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 Web site viewing and printing in the Commission's Public

<sup>9</sup> 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.

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-ISE-2017-100 and should be submitted on or before December 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25476 Filed 11-24-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82120; File No. SR-C2-2017-030]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Its Nominating and Governance Committee and Regulatory Oversight and Compliance Committee

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 14, 2017, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its governance documents with respect to changes relating to its director nomination and committee appointment process, its Nominating and Governance Committee and its Regulatory Oversight and Compliance Committee.

The text of the proposed rule change is also available on the Exchange’s Web site (<http://www.c2exchange.com/Legal/>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Bylaws and Certificate. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee (“N&G Committee”), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to amend the name of the Regulatory Oversight and Compliance Committee (“ROCC”) and make other technical, non-substantive changes.

###### Elimination of Nominating and Governance Committee

###### (a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.<sup>3</sup> Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the

Representative Directors. If however, there are less than two Industry Directors on the N&G Committee, then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body.<sup>4</sup> The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.<sup>5</sup> Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee, subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors (“Representative Directors”) as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.<sup>6</sup> With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of “Representative Director Nominating Body” and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. Additionally, similar to today’s practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors

<sup>4</sup> See Sections 1.1(k) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

<sup>5</sup> See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

<sup>6</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board, is final. There are no other changes with respect to the process for the nomination and selection of Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange's use of self-regulatory authority.

#### (b) Committee Appointments

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the ROCC are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate references to the N&G Committee with respect to committee appointments and transfer the N&G's current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROCC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. The Exchange notes that Boards of other Exchanges also have authority to appoint Board Committees.<sup>7</sup>

#### Filling of Director Vacancies

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category

of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the Representative Director Nominating Body's nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

#### Regulatory Oversight and Compliance Committee Changes

The Exchange proposes to change the name of the "Regulatory Oversight and Compliance Committee" ("ROCC") to the "Regulatory Oversight Committee" ("ROC"). The Exchange notes that there may be overlap and duplication of reports from the Compliance Department to the parent company Audit Committee and the Exchange ROCC. To address this issue, going forward, the Cboe Global Markets Audit Committee will be the "go to" Board committee for reports from the Chief Compliance Officer ("CCO") related to compliance matters. As such, the Exchange proposes to drop the reference of "Compliance" in "ROCC" in the Bylaws. The Exchange notes that the reporting function of the CCO to the ROC will be permissive. The Exchange also notes that the regulatory oversight committees of its affiliated exchanges does not use the term "Compliance" in their Committees' name.<sup>8</sup>

#### Technical, Non-Substantive Changes

Lastly, the Exchange proposes to change the Exchange's name in the title and signature line in its Certificate from "C2 Options Exchange, Incorporated" to Cboe C2 Exchange, Inc." The Exchange notes that it recently changed its legal name, but was unable to update the Exchange's name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that proposed the name changes that it would later amend the Certificate to reflect the new name in the title and signature line and the Exchange is seeking to do so now. Pursuant to Delaware law, the Exchange is also adding a reference to its original name in the introductory paragraph of the Certificate.<sup>9</sup>

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange

<sup>7</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

<sup>8</sup> See Section 4.4 of the Bylaws of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc.

<sup>9</sup> See Section 245(c) of the Delaware General Corporation Law (DGCL).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>13</sup> of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange's governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange's board including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.<sup>14</sup> Other Exchanges also provide that their Board, without input from a nominating committee, appoint members to committees.<sup>15</sup> The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect)

directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

The Exchange believes eliminating the reference to "Compliance" in the ROCC's name is appropriate and will reduce potential confusion given that the CCO is no longer required to (but may) report to the ROCC. The Exchange notes that the new name is also consistent with the name of the regulatory oversight committee of its affiliated exchanges.<sup>16</sup> Lastly, the Exchange believes updating the Exchange's name in the title and signature line of its Certificate and adding a reference to its original name in the introductory paragraph of the Certificate, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2017-030 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-C2-2017-030. 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

<sup>13</sup> 15 U.S.C. 78f(b)(3).

<sup>14</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>15</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

<sup>16</sup> See Section 4.4 of the Bylaws of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc.

Internet Web site (<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 Web site 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-C2-2017-030, and should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25466 Filed 11-24-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82126; File No. SR-CboeEDGX-2017-001]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Its Director Nomination and Committee Appointment Process and Its Nominating and Governance Committee

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 14, 2017, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in

Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its governance documents with respect to changes relating to its director nomination and committee appointment process and its Nominating and Governance Committee.

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://www.bats.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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Bylaws and Certificate. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee ("N&G Committee"), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to make other technical, non-substantive changes.

##### Elimination of Nominating and Governance Committee

###### (a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G

Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.<sup>3</sup> Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the Representative Directors. If however, there are less than two Industry Directors on the N&G Committee, then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body.<sup>4</sup> The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.<sup>5</sup> Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee, subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors ("Representative Directors") as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.<sup>6</sup> With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of "Representative Director Nominating Body" and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees, those Industry Directors

<sup>3</sup> Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

<sup>4</sup> See Sections 1.1(j) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

<sup>5</sup> See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

<sup>6</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

shall act as the Representative Director Nominating Body. Additionally, similar to the current practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board is final. There are no other changes with respect to the process for the nomination and selection of Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange's use of self-regulatory authority.

#### (b) Committee Appointments

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the Regulatory Oversight Committee ("ROC") are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate references to the N&G Committee with respect to committee appointments and transfer the N&G's current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. The Exchange notes that Boards of other Exchanges

also have authority to appoint Board Committees.<sup>7</sup>

#### Filling of Director Vacancies

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the Representative Director Nominating Body's nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

#### Technical, Non-Substantive Changes

Lastly, the Exchange proposes to change the Exchange's name in the title and signature line in its Certificate from "Bats EDGX Exchange, Inc." to "Cboe EDGX Exchange, Inc." The Exchange notes that it recently changed its legal name, but was unable to update the Exchange's name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that proposed the name changes that it would later amend the Certificate to

reflect the new name in the title and signature line and the Exchange is seeking to do so now. The Exchange also proposes to make clarifying amendments and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed restatement and amendment.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>11</sup> of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or

<sup>7</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78f(b)(3).

dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange's governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange's Board including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.<sup>12</sup> Other Exchanges also provide that their Board, without input from a nominating committee, appoint members to committees.<sup>13</sup> The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect) directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination

and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

Lastly, the Exchange believes the clarifying changes to the Exchange's Certificate, including updating the Exchange's name in the title and signature line, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2017-001 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2017-001. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2017-001, and

<sup>12</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>13</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25470 Filed 11-24-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82130; File No. SR-ISE-2017-99]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to All-Or-None Orders

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the 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 amend Rule 713 to delete Supplementary Material .02, which no longer is applicable.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://www.ise.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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange previously filed a rule change to amend the All-Or-None Order so that it may only be entered into the trading system with a time-in-force designation of Immediate-Or-Cancel.<sup>3</sup> Previously, an All-Or-None Order was a limit or market order that is to be executed in its entirety or not at all. It was designated as a market or limit order with any time-in-force designation. The Exchange filed to limit All-Or-None Orders to only be accepted with a time-in-force designation of Immediate-Or-Cancel.<sup>4</sup> Today, an Immediate-Or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. At that time, the Exchange also proposed to amend Supplementary Material .02 to Rule 713 to make clear that All-Or-None Orders will only be accepted with a time-in-force designation of Immediate-Or-Cancel and, therefore, would not persist in the Order Book.<sup>5</sup>

The Exchange proposes at this time to remove Supplementary Material .02 to Rule 713 as unnecessary as All-Or-None Orders do not rest on the Order Book.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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 because the current notation in Supplementary Material .02 to Rule 713 is confusing and unnecessary. All-Or-None Orders do not rest on the order book and do not allocate differently than any other incoming order therefore no specific mention of this order type is

necessary for Rule 713 which discusses priority.

#### 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. This proposal seeks to delete rule text which is unnecessary and may lead to confusion. All-Or-None Orders do not rest on the order book and do not allocate differently than any other incoming order.

#### 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 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<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately delete

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s 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.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR-ISE-2017-03) (Order Approving Proposed Rule Change, As Modified by Amendment No. 1, To Amend Various Rules in Connection with a System Migration to Nasdaq INET Technology).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).



unnecessary rule text which may minimize potential investor confusion. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-99 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-2017-99. 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 Web site (<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

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

available for Web site 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-ISE-2017-99, and should be submitted on or before December 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-25474 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82122; File No. SR-CboeBYX-2017-001]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Its Director Nomination and Committee Appointment Process and Its Nominating and Governance Committee

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 14, 2017, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its governance documents with respect to changes relating to its director nomination and committee appointment

process and its Nominating and Governance Committee.

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://www.bats.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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Bylaws and Certificate. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee ("N&G Committee"), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to make other technical, non-substantive changes.

##### Elimination of Nominating and Governance Committee

###### (a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.<sup>3</sup> Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the Representative Directors. If however,

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

there are less than two Industry Directors on the N&G Committee, then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body.<sup>4</sup> The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.<sup>5</sup> Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee, subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors (“Representative Directors”) as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.<sup>6</sup> With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of “Representative Director Nominating Body” and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. Additionally, similar to the current practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the

Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board, is final. There are no other changes with respect to the process for the nomination and selection of Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange’s use of self-regulatory authority.

#### (b) Committee Appointments

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the Regulatory Oversight Committee (“ROC”) are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate references to the N&G Committee with respect to committee appointments and transfer the N&G’s current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. The Exchange notes that Boards of other Exchanges also have authority to appoint Board Committees.<sup>7</sup>

#### Filling of Director Vacancies

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category

of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the Representative Director Nominating Body’s nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

#### Technical, Non-Substantive Changes

Lastly, the Exchange proposes to change the Exchange’s name in the title and signature line in its Certificate from “Bats BYX Exchange, Inc.” to “Cboe BYX Exchange, Inc.” The Exchange notes that it recently changed its legal name, but was unable to update the Exchange’s name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that proposed the name changes that it would later amend the Certificate to reflect the new name in the title and signature line and the Exchange is seeking to do so now. The Exchange also proposes to make clarifying amendments and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed restatement and amendment.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations

<sup>4</sup> See Sections 1.1(j) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

<sup>5</sup> See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

<sup>6</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>7</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5–3.

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>11</sup> of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange's

governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange's Board including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.<sup>12</sup> Other Exchanges also provide that their Board, without input from a nominating committee, appoint members to committees.<sup>13</sup> The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect) directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

<sup>12</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>13</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

Lastly, the Exchange believes the clarifying changes to the Exchange's Certificate, including updating the Exchange's name in the title and signature line, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78f(b)(3).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2017-001 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-CboeBYX-2017-001. 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 Web site (<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 Web site 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-CboeBYX-2017-001, and should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25467 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270-334, OMB Control No. 3235-0380]

**Submission for OMB Review; Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736

*Extension:*  
Form F-10

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F-10 (17 CFR 239.40) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that may be used by a foreign private issuer that: Is incorporated or organized in Canada; has been subject to, and in compliance with, Canadian reporting requirements for at least 12 months; and has an aggregate market value of common stock held by non-affiliates of at least \$75 million. The purpose of this information collection is to permit verification of compliance with securities law requirements and assure the public availability of such information. We estimate that Form F-10 takes 25 hours per response and is filed by 77 respondents. We further estimate that 25% of the 25 hours per response (6.25 hours) is prepared by the issuer for an annual reporting burden of 481 hours (6.25 hours per response × 77 responses).

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 control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549

or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: November 20, 2017.

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25463 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82125; File No. SR-CboeEDGA-2017-001]

**Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Its Director Nomination and Committee Appointment Process and Its Nominating and Governance Committee**

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 14, 2017, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its governance documents with respect to changes relating to its director nomination and committee appointment process and its Nominating and Governance Committee.

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://www.bats.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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Bylaws and Certificate. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee ("N&G Committee"), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to make other technical, non-substantive changes.

Elimination of Nominating and Governance Committee

(a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.<sup>3</sup> Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the Representative Directors. If however, there are less than two Industry Directors on the N&G Committee, then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body.<sup>4</sup> The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes

<sup>3</sup> Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

<sup>4</sup> See Sections 1.1(j) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

pursuant to a Run-off Election.<sup>5</sup> Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee, subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors ("Representative Directors") as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.<sup>6</sup> With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of "Representative Director Nominating Body" and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. Additionally, similar to the current practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board, is final. There are no other changes with respect

<sup>5</sup> See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

<sup>6</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

to the process for the nomination and selection of Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange's use of self-regulatory authority.

(b) Committee Appointments

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the Regulatory Oversight Committee ("ROC") are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate references to the N&G Committee with respect to committee appointments and transfer the N&G's current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. The Exchange notes that Boards of other Exchanges also have authority to appoint Board Committees.<sup>7</sup>

Filling of Director Vacancies

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board

<sup>7</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the Representative Director Nominating Body's nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

#### Technical, Non-Substantive Changes

Lastly, the Exchange proposes to change the Exchange's name in the title and signature line in its Certificate from "Bats EDGA Exchange, Inc." to "Cboe EDGA Exchange, Inc." The Exchange notes that it recently changed its legal name, but was unable to update the Exchange's name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that it would later amend the Certificate to reflect the new name in the title and signature line and the Exchange is seeking to do so now. The Exchange also proposes to make clarifying amendments and cite to the applicable provisions of the General Corporation Law of the State of Delaware in connection with the proposed restatement and amendment.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>11</sup> of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange's governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange's Board including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.<sup>12</sup> Other Exchanges also provide that their Board, without input from a nominating committee, appoint members to committees.<sup>13</sup> The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect) directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

Lastly, the Exchange believes the clarifying changes to the Exchange's Certificate, including updating the Exchange's name in the title and signature line, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

<sup>12</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>13</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78f(b)(3).

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2017-001 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-CboeEDGA-2017-001. 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 Web site (<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 Web site 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-CboeEDGA-2017-001, and should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-25469 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-82128; File No. SR-GEMX-2017-51]**

### **Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to All-Or-None Orders**

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>14</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 2017, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the 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 amend Rule 713 to delete Supplementary Material .02, which no longer is applicable.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange previously filed a rule change to amend the All-Or-None Order so that it may only be entered into the trading system with a time-in-force designation of Immediate-Or-Cancel.<sup>3</sup> Previously, an All-Or-None Order was a limit or market order that is to be executed in its entirety or not at all. It was designated as a market or limit order with any time-in-force designation. The Exchange filed to limit All-Or-None Orders to only be accepted with a time-in-force designation of

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 80102 (February 24, 2017), 82 FR 12381 (March 2, 2017) (SR-ISEGemini-2017-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to All-or-None Orders).

Immediate-Or-Cancel.<sup>4</sup> Today, an Immediate-Or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. At that time, the Exchange also proposed to amend Supplementary Material .02 to Rule 713 to make clear that All-Or-None Orders will only be accepted with a time-in-force designation of Immediate-Or-Cancel and, therefore, would not persist in the Order Book.<sup>5</sup>

The Exchange proposes at this time to remove Supplementary Material .02 to Rule 713 as unnecessary as All-Or-None Orders do not rest on the Order Book.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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 because the current notation in Supplementary Material .02 to Rule 713 is confusing and unnecessary. All-Or-None Orders do not rest on the order book and do not allocate differently than any other incoming order therefore no specific mention of this order type is necessary for Rule 713 which discusses priority.

### 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. This proposal seeks to delete rule text which is unnecessary and may lead to confusion. All-Or-None Orders do not rest on the order book and do not allocate differently than any other incoming order.

### 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 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<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately delete unnecessary rule text which may minimize potential investor confusion. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2017-51 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-GEMX-2017-51. 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 Web site (<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 Web site 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-GEMX-2017-51, and should be submitted on or before December 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25472 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82129; File No. SR–MRX–2017–24]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to All-Or-None Orders

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 2017, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the 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 amend Rule 713 to delete Supplementary Material .02, which no longer is applicable.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://www.ise.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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange previously filed a rule change to amend the All-Or-None Order so that it may only be entered into the trading system with a time-in-force

designation of Immediate-Or-Cancel.<sup>3</sup> Previously, an All-Or-None Order was a limit or market order that is to be executed in its entirety or not at all. It was designated as a market or limit order with any time-in-force designation. The Exchange filed to limit All-Or-None Orders to only be accepted with a time-in-force designation of Immediate-Or-Cancel.<sup>4</sup> Today, an Immediate-Or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. At that time, the Exchange also proposed to amend Supplementary Material .02 to Rule 713 to make clear that All-Or-None Orders will only be accepted with a time-in-force designation of Immediate-Or-Cancel and, therefore, would not persist in the Order Book.<sup>5</sup>

The Exchange proposes at this time to remove Supplementary Material .02 to Rule 713 as unnecessary as All-Or-None Orders do not rest on the Order Book.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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 because the current notation in Supplementary Material .02 to Rule 713 is confusing and unnecessary. All-Or-None Orders do not rest on the order book and do not allocate differently than any other incoming order therefore no specific mention of this order type is necessary for Rule 713 which discusses priority.

##### 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. This proposal seeks to delete rule text which is unnecessary and may lead to confusion. All-Or-None Orders do not rest on the order book and do not

allocate differently than any other incoming order.

##### 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 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<sup>8</sup> and Rule 19b–4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>10</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately delete unnecessary rule text which may minimize potential investor confusion. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s 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.

<sup>10</sup> 17 CFR 240.19b–4(f)(6).

<sup>11</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>3</sup> See Securities Exchange Act Release No. 81204 (July 25, 2017), 82 FR 35557 (June 31, 2017) (SR–MRX–2017–02)(Order Approving Proposed Rule Change To Amend Various Rules in Connection With a System Migration to Nasdaq INET Technology).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2017-24 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-MRX-2017-24. 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 Web site (<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 Web site 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-MRX-2017-24, and should be submitted on or before December 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-25473 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82119; File No. SR-CBOE-2017-072]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Its Nominating and Governance Committee and Regulatory Oversight and Compliance Committee

November 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 2017, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its governance documents and rules with respect to changes relating to its director nomination and committee appointment process, its Nominating and Governance Committee and its Regulatory Oversight and Compliance Committee.

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Bylaws, Certificate and Rules. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee ("N&G Committee"), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to amend the name of the Regulatory Oversight and Compliance Committee ("ROCC") and make other technical, non-substantive changes.

###### Elimination of Nominating and Governance Committee

###### (a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.<sup>3</sup> Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the Representative Directors. If however, there are less than two Industry Directors on the N&G Committee, then the Trading Permit Holder Subcommittee of the Advisory Board

<sup>3</sup> Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

shall act as the Representative Director Nominating Body.<sup>4</sup> The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.<sup>5</sup> Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee, subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors (“Representative Directors”) as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.<sup>6</sup> With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of “Representative Director Nominating Body” and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. Additionally, similar to today’s practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes

pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board, is final. There are no other changes with respect to the process for the nomination and selection of Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange’s use of self-regulatory authority.

#### (b) Committee Appointments

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the ROCC are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board. Lastly, Exchange Rule 2.1 provides that the N&G Committee, with the approval of the Board, appoints the Chairman, Vice Chairman (if any) and members of the Business Conduct Committee (“BCC”) and fills vacancies on the BCC.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate references to the N&G Committee with respect to committee appointments and transfer the N&G’s current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROCC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. Additionally, the Exchange proposes that the Board appoint the Chairman, Vice Chairman (if any) and members to the BCC and fills vacancies on the BCC. The Exchange notes that Boards of other Exchanges also have authority to appoint Board and non-Board Committees.<sup>7</sup>

#### Filling of Director Vacancies

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the Representative Director Nominating Body’s nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

#### Regulatory Oversight and Compliance Committee Changes

The Exchange proposes to change the name of the “Regulatory Oversight and Compliance Committee” (“ROCC”) to the “Regulatory Oversight Committee” (“ROC”). The Exchange notes that there may be overlap and duplication of reports from the Compliance Department to the parent company Audit Committee and the Exchange ROCC. To address this issue, going forward, the Choe Global Markets Audit Committee will be the “go to” Board committee for reports from the Chief Compliance Officer (“CCO”) related to compliance matters. As such, the Exchange proposes to drop the reference of “Compliance” in “ROCC” in the Bylaws and Exchange Rule 17.10. The Exchange notes that the reporting function of the CCO to the ROC will be

<sup>4</sup> See Sections 1.1(k) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

<sup>5</sup> See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

<sup>6</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>7</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

permissive. The Exchange also notes that the regulatory oversight committees of its affiliated exchanges does not use the term "Compliance" in their Committees' name.<sup>8</sup>

#### Technical, Non-Substantive Changes

Lastly, the Exchange proposes to change the Exchange's name in the title and signature line in its Certificate from "Chicago Board Options Exchange, Incorporated" to "Cboe Exchange, Inc." The Exchange notes that it recently changed its legal name, but was unable to update the Exchange's name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that proposed the name changes that it would later amend the Certificate to reflect the new name in the title and signature line and the Exchange is seeking to do so now. Pursuant to Delaware law, the Exchange is also adding a reference to its original name in the introductory paragraph of the Certificate.<sup>9</sup>

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>13</sup> of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange's governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange's board including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.<sup>14</sup> Other Exchanges also provide that their Board,

without input from a nominating committee, appoint members to committees.<sup>15</sup> The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect) directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

The Exchange believes eliminating the reference to "Compliance" in the ROCC's name is appropriate and will reduce potential confusion given that the CCO is no longer required to (but may) report to the ROCC. The Exchange notes that the new name is also consistent with the name of the regulatory oversight committee of its affiliated exchanges.<sup>16</sup> Lastly, the Exchange believes updating the Exchange's name in the title and signature line of its Certificate and adding a reference to its original name in the introductory paragraph of the Certificate, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects

<sup>8</sup> See Section 4.4 of the Bylaws of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc.

<sup>9</sup> See Section 245(c) of the Delaware General Corporation Law (DGCL).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78f(b)(3).

<sup>14</sup> See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

<sup>15</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

<sup>16</sup> See Section 4.4 of the Bylaws of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc.

investors and the public interest of market participants.

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2017-072 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2017-072. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2017-072, and should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25465 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270-118, OMB Control No. 3235-0095]

#### **Submission for OMB Review; Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736

*Extension:*

<sup>17</sup> 17 CFR 200.30-3(a)(12).

#### Rule 236

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 236 (17 CFR 230.236) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") provides an exemption from registration under the Securities Act for the offering of shares of stock or similar securities to provide funds to be distributed to security holders in lieu of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction. Issuers wishing to rely upon the exemption are required to furnish specified information to the Commission at least 10 days prior to the offering. The information is needed to provide notice that the issuer is relying on the exemption. Public companies are the likely respondents. All information provided to the Commission is available to the public for review upon request. Approximately 10 respondents file the information required by Rule 236 at an estimated 1.5 hours per response for a total annual reporting burden of 15 hours (1.5 hours per response × 10 responses).

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 control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: November 20, 2017.

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25464 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE  
COMMISSION****Sunshine Act Meetings**

**TIME AND DATE:** 12:00 p.m. on Friday, December 1, 2017.

**PLACE:** Closed Commission Hearing Room 10800.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:**

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: November 22, 2017.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017-25701 Filed 11-22-17; 4:15 pm]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-82127; File No. SR-IEX-2017-40]

**Self-Regulatory Organizations;  
Investors Exchange LLC; Notice of  
Filing and Immediate Effectiveness of  
Proposed Rule Change To Modify Its  
Fee Schedule, Pursuant to IEX Rule  
15.110(a) and (c), To Adopt Pricing for  
Orders That Execute in an IEX Auction  
for IEX-Listed Securities**

November 20, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on (date), the Investors Exchange LLC (“IEX” 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**

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to adopt pricing for orders that execute in an IEX Auction<sup>6</sup> for IEX-listed securities pursuant to Rule 11.350. Changes to the Fee Schedule pursuant to this proposal are effective upon filing, and will be operative once the Exchange begins conducting IEX Auctions in IEX-listed securities.<sup>7</sup> The text of the proposed rule change is available at the Exchange’s Web site at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> IEX Auctions include the daily Opening and Closing Auctions (Rule 11.350(c) and (d), respectively), as well as IPO Auctions related to an initial public offering of securities (Rule 11.350(e)), Halt Auctions following a regulatory halt (Rule 11.350(e)), and Volatility Auctions following a trading pause pursuant to the Limit Up-Limit Down Plan (Rule 11.350(f)).

<sup>7</sup> See IEX Trader Alert #2017-015, available on the Exchange public Web site.

**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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization’s  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change*

**1. Purpose**

On August 10, 2017, the Commission approved a proposed rule change by the Exchange to adopt rules governing auctions, including dissemination of auction-related market data, for securities listed on the Exchange pursuant to Chapter 14 of the IEX Rule Book.<sup>8</sup> The Exchange proposes to update its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to add new Fee Codes to identify the fees applicable to orders that execute in IEX Auctions. The IEX Auction processes are designed to maximize participation in the auctions in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price. The Exchange believes that fees are an important component of the IEX Auction processes, in that execution fees can influence the trading behavior of Members by creating economic incentives (and disincentives) for Members that participate in IEX Auctions. Thus, the Exchange is proposing fees that are similarly designed to incentivize participation in IEX Auctions in order to further support an efficient price discovery process and greater opportunity for execution at the official auction price.

The Exchange proposes to apply the following new Fee Codes:

- Executions in the Opening Auction<sup>9</sup> will receive Fee Code “O”
- Executions in the Closing Auction<sup>10</sup> will receive Fee Code “C”

<sup>8</sup> See Securities and Exchange Act Release No. 81316 (August 4, 2017), 82 FR 37474 (August 10, 2017) (SR-IEX-2017-10).

<sup>9</sup> See Rule 11.350(c).

<sup>10</sup> See Rule 11.350(d).

- Executions in a Halt Auction<sup>11</sup> or Volatility Auction<sup>12</sup> will receive Fee Code “H”
- Executions in an IPO Auction<sup>13</sup> will receive Fee Code “N”

As proposed, non-displayed orders on the Continuous Book<sup>14</sup> that are executed in an IEX Auction will receive the applicable auction Fee Code on their execution reports and will be subject to a fee of \$0.0003 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00) (the “Auction Match Fee”). Furthermore, all orders on the Auction Book<sup>15</sup> that are executed in an IEX Auction will receive the applicable auction Fee Code on their execution reports and will also be subject to the Auction Match Fee of \$0.0003 per share (or 0.30% of total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction for shares executed below \$1.00).

The Exchange believes that the proposed Auction Match Fee for non-displayed orders on the Continuous Book and all orders on the Auction Book that are executed in an IEX Auction are designed to incentivize participation in IEX Auctions by providing a cost-effective execution mechanism that offers Members an opportunity to receive executions at the official opening, re-opening, or closing price of an IEX-listed security. The Exchange believes the proposed fees enhance the price discovery process by incentivizing Members to enter interest in IEX-listed securities into IEX Auctions, rather than investing resources into developing and maintaining their own off-exchange

internalization mechanisms, or utilizing the internalization mechanisms of competing brokers and alternative trading systems, and entering only the balance to participate in an IEX Auction.<sup>16</sup> The Exchange believes incentivizing broader participation will increase overall liquidity in the IEX Auctions, and enhance the price discovery process, particularly in the Opening and Closing Auctions, which provide a critical price discovery mechanism to establish the official opening and closing prices for IEX-listed securities at the start and end of each trading day.

Moreover, orders that were displayed on the Continuous Book during the Pre-Market Session<sup>17</sup> or Regular Market Session<sup>18</sup> that are executed in the Opening Auction or Closing Auction, respectively, will receive the applicable auction Fee Code, as well as existing Fee Code L (Displayed Match Fee).<sup>19</sup> Thus, such orders will not be charged a fee because, pursuant to the IEX Fee Schedule, to the extent a Member receives multiple Fee Codes on an

<sup>16</sup> See, e.g., Exhibit F of Instinet LLC’s Form ATS, which describes its MOC Crosses that match buy and sell orders for certain U.S. equity securities marked “market on close”. See also, Table 6 in Appendix A of Bats BZX Exchange’s (“Bats”) response letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, to Secretary Brent J. Fields, dated August 2, 2017, in support of the proposed Bats Market Close. Table 6 illustrates significant volume in shares of FedEx, Proctor & Gamble, and Cardinal Health that was executed at the official closing price at off exchange venues. See Securities and Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR–BatsBZX–2017–34).

<sup>17</sup> See Rule 1.160(z).

<sup>18</sup> See Rule 1.160(gg).

<sup>19</sup> The Exchange currently does not charge any fee to Members for executions on IEX that provide or take resting interest with displayed priority (*i.e.*, an order or portion of a reserve order that is booked and ranked with display priority on the Order Book either as the IEX best bid or best offer (“BBO”), or at a less aggressive price). This pricing is referred to by the Exchange as “Displayed Match Fee” with a Fee Code of ‘L’ provided by the Exchange on execution reports. See the Investors Exchange Fee Schedule, available on the Exchange public Web site.

execution, the lower fee shall apply.<sup>20</sup> As with the existing fee structure for execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery leading into IEX Auctions.

The Exchange notes that the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity,<sup>21</sup> and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry,<sup>22</sup> are not applicable to IEX Auctions. IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers, rendering the Internalization Fee, Displayed Match Fee for non-displayed orders that remove displayed liquidity, and the exception to the Non-Displayed Match Fee for displayable orders that remove non-displayed resting interest upon entry, inapplicable.

The following table is designed to illustrate the various Fee Codes and execution fees that will be applied to orders that may be executed in an IEX Auction:

<sup>20</sup> See IEX Fee Schedule, Transaction Fees, bullet three. The Exchange also notes that there is no Continuous Book prior to a Halt, Volatility, or IPO auction, and thus no opportunity for a Member to have a displayed order on the Continuous Book that is executed in such auctions.

<sup>21</sup> See *supra* note 19.

<sup>22</sup> The Exchange does not charge any fee to Members (on a per MPID basis) for executions on IEX that remove resting interest with non-displayed priority where (i) the liquidity removing order was displayable (*i.e.*, the order would have booked and displayed if posted to the Order Book), and (ii) on a monthly basis, at least 90% of the liquidity removing MPID’s aggregate executions of displayable orders provided liquidity during such calendar month. In such transactions, the liquidity providing non-displayed interest is subject to the Non-Displayed Match Fee.

<sup>11</sup> See Rule 11.350(e).

<sup>12</sup> See Rule 11.350(f).

<sup>13</sup> See Rule 11.350(e).

<sup>14</sup> See Rule 11.350(a)(4).

<sup>15</sup> See Rule 11.350(a)(1).

Order details	Opening auction	Closing auction	Halt/volatility auction	IPO auction	Fee for executions >=\$1.00	Fee for executions <\$1.00
Non-displayed orders resting on the Continuous Book that execute in the Opening or Closing Auction <sup>23</sup> .	O .....	C .....	Not applicable .....	Not applicable .....	\$0.0003 .....	0.30% of TDVT. <sup>24</sup>
Displayed orders resting on the Continuous Book that execute in the Opening or Closing Auction.	O, L .....	C, L .....	Not applicable .....	Not applicable .....	FREE .....	FREE.
All orders on the Auction Book that execute in an IEX Auction.	O .....	C .....	H .....	N .....	\$0.0003 .....	0.30% of TDVT

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>25</sup> of the Act in general, and furthers the objectives of Sections 6(b)(4)<sup>26</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

IEX believes that its proposed pricing for orders executed in an IEX Auction is reasonable and equitable because, as discussed above, the proposed fees are designed to incentivize participation in IEX Auctions by providing a cost-effective execution mechanism that offers Members an opportunity to receive executions at the official opening, re-opening, or closing price of an IEX-listed security. The Exchange believes the proposed fees may also incentivize Members to enter more interest into IEX Auctions, rather than investing resources into developing and maintaining their own off-exchange internalization mechanisms, or utilizing the internalization mechanisms of competing brokers and alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. However, in the case of auctions, the primary listing market receives the majority of order flow seeking execution

at the official opening, re-opening, and closing prices of its listed securities, because such price is generally established by its auction processes. As a result, the Exchange believes that, to date, the Nasdaq Stock Market (“Nasdaq”) and the New York Stock Exchange (“NYSE”) charge auction fees that are considerably higher than those charged during continuous trading, when accounting for the fact that fees for executions in the auction processes are assessed on both sides of each transaction, and a large portion of the fees collected for removing liquidity during continuous trading are largely earmarked to pay rebates to liquidity providers.<sup>27</sup> Consequently, the Exchange believes there is considerable demand from market participants seeking an alternative to the primary market’s auction processes, as evidenced by the recent proposal from Bats BZX Exchange, Inc. (“Bats”) to offer a closing process to match orders in non-listed securities at the official closing price published by the primary listing market (the “Bats Market Close”).<sup>28</sup> Therefore, the Exchange has designed its proposed fees to meet the demands of market participants by

offering competitive pricing to compete for auction order flow with trading centers such as Bats (if the Bats Market Close is approved), as well as other off-exchange facilities.<sup>29</sup>

As discussed above, IEX also believes that it is appropriate, reasonable, and consistent with the Act not to charge a fee for an order executed in an IEX Auction that was displayed on the Continuous Book prior to the Opening or Closing Auction. As with the existing fee structure for the execution of transactions including displayed liquidity, this fee structure is designed to incentivize Members to send IEX aggressively priced displayable orders, thereby contributing to price discovery, consistent with the overall goal of enhancing market quality. IEX believes that, as with the existing Displayed Match Fee, not charging a fee for the execution of a previously displayed order is equitable and not unfairly discriminatory because it is designed to facilitate the entry of, and enhance execution opportunities for, displayable orders, thereby further incentivizing entry of displayed orders.

Furthermore, the Exchange notes that the proposed fees are nondiscriminatory because they will apply uniformly to all Members, and all Members have an equal opportunity to submit any type of Auction Eligible Order,<sup>30</sup>—including both displayed and non-displayed orders on the Continuous Book, or orders that queue on the Auction Book—for execution in an IEX Auction, using the order types made available to all Members on a fair and equal basis. In addition, the Exchange believes that the proposed fees for IEX Auctions are appropriate, reasonable, and consistent with the Act, because such fees are within the range of transaction fees charged by other exchanges for their

<sup>23</sup> The Exchange notes that non-displayed orders resting on the Continuous Book that execute in the auction will no longer receive Fee Code “I”, and will instead receive the applicable auction Fee Code. Orders taking or adding non-displayed liquidity prior to or after an IEX Auction, will continue to receive Fee Code I, either alone or in conjunction with other applicable Fee Codes.

<sup>24</sup> “TDVT” means the total dollar value of the transaction calculated as the execution price multiplied by the number of shares executed in the transaction. See IEX Fee Schedule, Definitions, bullet five.

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(4).

<sup>27</sup> For example, the Nasdaq Stock Market charges fees ranging between \$0.0008–\$0.0016 for orders executed in the Nasdaq Closing Cross, resulting in net fee capture ranging between \$0.0016–\$0.0032 per share executed. In contrast, during continuous trading, Nasdaq pays rebates ranging between \$0.0015–\$0.00305 to liquidity providing orders, and charges a fee of \$0.0030 to liquidity taking orders, resulting in net fee capture ranging between –\$0.00005–\$0.0015 per share executed. Similarly, NYSE charges fees ranging between \$0.0008–\$0.0011 for MOC and LOC orders executed in the NYSE Closing Auction, resulting in net fee capture ranging between \$0.0016 and \$0.0022 per share executed. In contrast, during continuous trading, NYSE pays a rebate ranging between \$0.0010–\$0.0022 to liquidity providing orders for non-market makers and non-Supplemental Liquidity providers, and assuming a member qualifies for the highest removal tier, NYSE charges \$0.00275 to liquidity taking orders, resulting in net fee capture ranging between \$0.00055–\$0.00175 per share executed.

<sup>28</sup> See Securities and Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR–BatsBZX–2017–34).

<sup>29</sup> See *supra* note 16.

<sup>30</sup> See Rule 11.350(a)(2).



respective Auction processes.<sup>31</sup> Furthermore, although orders that execute in IEX Auctions may be subject to different fees than similar orders executed during continuous trading, the Exchange notes that other exchanges also charge differential pricing for orders that execute in their opening process.<sup>32</sup> Moreover, as described above, the Exchange believes the proposed fees for orders executed in an IEX Auction are appropriate, reasonable, and consistent with the Act, because such fees are designed to incentivize participation in IEX Auctions, in order to provide an efficient price discovery process and greater opportunity for execution at the official auction price.

Additionally, the Exchange believes that its proposed Fee Codes for orders executed in an IEX Auction, which will be provided on execution reports, will provide transparency and predictability to Members as to the applicable transaction fees, because Members can determine which Fee Code is applicable to the execution of a particular order in an IEX Auction.

As discussed above, the Exchange does not believe that it is appropriate to provide the Internalization Fee, or the Displayed Match Fee to non-displayed orders that execute in an IEX Auction, because IEX Auctions are an aggregated match process where only the cumulative volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers. Similarly, the Exchange does not believe that the exception to the Non-Displayed Match Fee for displayable orders that take resting interest upon entry is applicable in the context of an IEX Auction, since such orders are not able to remove resting interest on entry in an IEX Auction, because they are either queued on the Auction Book and not displayed, or resting displayed on the Continuous Book.<sup>33</sup> Moreover, as noted above, the IEX Auctions are an aggregated match process where only the cumulative

volume to buy and sell at various prices is considered, and thus there is no basis to distinguish between liquidity providers and liquidity removers, or their respective display status on the Auction Book.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, and 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. Further, IEX believes that its proposal does not raise any new or novel issues that have not previously been considered by the Commission when approving the existing IEX fees, or the auction fees of other national securities exchanges.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and draw additional volume to the Exchange for IEX Auctions. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition between Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed in some circumstances, these different fees are not based on the type of Member entering the orders that execute in an IEX Auction, but based on the type of order entered, and all

Members can submit any of IEX's permissible order types.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>34</sup> of the Act.

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 under Section 19(b)(2)(B)<sup>35</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-40 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2017-40. This file number should be included in 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>31</sup> For example, the Nasdaq Stock Market charges fees ranging from \$0.00085-\$0.0015 for orders executed in the Nasdaq Opening Cross, including capping such fees at \$35,000 per month for certain members, which includes crosses for listed and non-listed securities. Similarly, NYSE charges fees ranging from \$0 for closing off-set orders and orders on the continuous book that are executed in the auction, to \$0.0011 for MOC and LOC orders (for members that don't qualify for MOC/LC Tier 1 or 2).

<sup>32</sup> See *id.*

<sup>33</sup> The Exchange notes that it is of course possible for a displayed order to remove non-displayed liquidity during continuous trading on the Continuous Book; however, such execution would not be part of an IEX Auction, and would be subject to the Exchange's existing Fee Schedule.

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>35</sup> 15 U.S.C. 78s(b)(2)(B).

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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at [www.iextrading.com](http://www.iextrading.com). 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-IEX-2017-40 and should be submitted on or before December 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25471 Filed 11-24-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32900; 812-14799]

### New Mountain Finance Corporation, et al.

November 20, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of application for an order ("Order") to amend a prior order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and under rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain business development companies (each, a "BDC") and certain closed-end investment companies to co-invest in portfolio companies with each other and

with affiliated investment funds. The Order would supersede the prior order.<sup>1</sup>

**APPLICANTS:** New Mountain Finance Corporation ("NMFC"); NMF Ancora Holdings, Inc., NMF QID NGL Holdings, Inc., and NMF YP Holdings, Inc. (collectively, the "NMFC Subsidiaries"); New Mountain Finance SBIC, L.P. ("SBIC LP"); New Mountain Net Lease Corporation ("NMNLC"); New Mountain Guardian Partners II, L.P. ("Guardian II"); New Mountain Guardian II Master Fund-A, L.P. ("Guardian II Master A"); New Mountain Guardian II Master Fund-B, L.P. ("Guardian II Master B," and together with Guardian II and Guardian II Master A, the "Guardian II Funds"); and New Mountain Finance Advisers BDC, L.L.C. (the BDC Adviser") on behalf of itself and its successors.<sup>2</sup>

**FILING DATES:** The application was filed on July 10, 2017 and amended on October 31, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2017, 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 St., NE., Washington, DC 20549-1090. Applicants: Robert A. Hamwee, New Mountain Finance Corporation, 787 Seventh Avenue, 48th Floor, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551-6990 or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the

<sup>1</sup> New Mountain Finance Corporation, et al., Investment Company Act Rel. Nos. 32630 (May 8, 2017) (notice) and 32668 (Jun. 5, 2017).

<sup>2</sup> The term "successor," means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

application. The complete application may be obtained via the Commission's Web site 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.

### Applicants' Representations

1. NMFC, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.<sup>3</sup> Applicants state that NMFC's Objectives and Strategies<sup>4</sup> are to generate both current income and capital appreciation through the sourcing and origination of debt securities at all levels of the capital structure, including first and second lien debt, notes, bonds and mezzanine securities. The board of directors ("Board") of NMFC is comprised of seven directors, four of whom are not "interested directors" as defined in section 2(a)(19) of the Act ("Non-Interested Directors"), of NMFC.

2. The NMFC Subsidiaries are Wholly-Owned Investment Subs (as defined below) of NMFC, each structured as a Delaware corporation to hold equity or equity-like investments in portfolio companies organized as limited liability companies or other forms of pass-through entities. The NMFC Subsidiaries are not registered under the Act in reliance on the exclusion from the definition of "investment company" in section 3(a)(7) of the Act.

3. SBIC LP, a Wholly-Owned Investment Sub of NMFC, is structured as a Delaware limited partnership. SBIC LP received a license from the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBA Act") as a small business investment company (each such licensed entity, a "SBIC Subsidiary").

4. NMNLC, a Maryland corporation, is a Wholly-Owned Investment Sub of NMFC. NMNLC was formed to acquire real properties that are subject to "triple net" leases and will qualify as a real

<sup>3</sup> Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>4</sup> "Objectives and Strategies" means a Regulated Fund's investment objectives and strategies as described in the Regulated Fund's registration statement on Form N-2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the "Securities Act"), or the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

<sup>36</sup> 17 CFR 200.30-3(a)(12).

estate investment trust (“REIT”) within the meaning of section 856 of the Internal Revenue Code (“Code”). NMNLC is not registered under the Act because substantially all of its assets consist of real properties.

5. Guardian II is a private fund organized in Delaware. Both Guardian II Master A and Guardian II Master B are private funds organized as Cayman Islands exempted limited partnerships. Applicants state that the investment objective of each of these funds is to generate both current income and capital appreciation by investing primarily in first lien and second lien secured loans as well as subordinated debt. None of the Guardian II Funds is registered under the Act in reliance on the exclusion from the definition of “investment company” in section 3(c)(7) of the Act. The investment activities of each of the Guardian II Funds is managed by the BDC Adviser pursuant to an investment management agreement.

6. BDC Adviser, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and serves as the investment adviser to NMFC and each of the Guardian II Funds.

7. Applicants seek an Order to permit one or more Regulated Funds<sup>5</sup> and/or one or more Affiliated Funds<sup>6</sup> to participate in the same investment opportunities through a proposed co-investment program (the “Co-Investment Program”) where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d-1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;<sup>7</sup> and (b) making additional investments in securities of such issuers, including through the exercise

<sup>5</sup> “Regulated Fund” means any of NMFC and any Future Regulated Fund. “Future Regulated Fund” means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term “Adviser” means (a) the BDC Adviser, and (b) any future investment adviser that controls, is controlled by, or is under common control with the BDC Adviser and is registered as an investment adviser under the Advisers Act.

<sup>6</sup> “Affiliated Fund” means the Guardian II Funds and any Future Affiliated Funds. “Future Affiliated Fund” means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

<sup>7</sup> The term “private placement transactions” means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

of warrants, conversion privileges, and other rights to purchase securities of the issuers (“Follow-On Investments”). “Co-Investment Transaction” means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub) participated together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.<sup>8</sup>

8. Applicants state any of the Regulated Funds may, from time to time, form a Wholly-Owned Investment Sub.<sup>9</sup> Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) of the Act and rule 17d-1 under the Act. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub’s participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund’s investments and,

<sup>8</sup> All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

<sup>9</sup> The term “Wholly-Owned Investment Sub” means an entity (i) that is a wholly-owned subsidiary of a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Fund (and, in the case of an SBIC Subsidiary, maintain a license under the SBA Act and issue debentures guaranteed by the SBA); (iii) with respect to which the Regulated Fund’s Board has the sole authority to make all determinations with respect to the entity’s participation under the conditions of the application; and (iv)(A) that would be an investment company but for section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) that qualifies as a REIT within the meaning of section 856 of the Code because substantially all of its assets would consist of real properties. Each of the NMFC Subsidiaries, SBIC LP, and NMNLC is a Wholly-Owned Investment Sub of NMFC, and any future subsidiaries of the Regulated Funds that participate in Co-Investment Transactions will be Wholly-Owned Investment Subs.

therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund’s Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub’s participation in a Co-Investment Transaction, and the Regulated Fund’s Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund’s place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

9. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment as described in the application (“Available Capital”), and other pertinent factors applicable to that Regulated Fund. The Advisers expect that any portfolio company that is an appropriate investment for a Regulated Fund should also be an appropriate investment for one or more other Regulated Funds and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.<sup>10</sup>

10. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (“Eligible Directors”), and the “required majority,” as defined in section 57(o) of the Act (“Required Majority”) <sup>11</sup> will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

11. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if,

<sup>10</sup> The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

<sup>11</sup> In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

12. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

13. Applicants state that if an Adviser or its principal owners (the "Principals"), or any person controlling, controlled by, or under common control with an Adviser or the Principals, and any Affiliated Fund (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as required under condition.

14. Applicants believe that this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of an Adviser or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. The Non-Interested Directors shall evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

#### **Applicants' Legal Analysis**

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control

with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d-1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

#### **Applicants' Conditions**

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser

will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) The Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the

Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2)(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all

investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,<sup>12</sup> a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2)(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

<sup>12</sup> This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a

Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity; then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including,

without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee<sup>13</sup> (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable state law affecting the Board's composition, size or manner of election.

<sup>13</sup> Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-25462 Filed 11-24-17; 8:45 am]

**BILLING CODE P**

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## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15382; OREGON Disaster Number OR-00089 Declaration of Economic Injury]**

### Administrative Declaration of an Economic Injury Disaster for the State of Oregon

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon, dated 11/16/2017.

*Incident:* Chetco Bar Fire.

*Incident Period:* 07/12/2017 through 10/31/2017.

**DATES:** Issued on 11/16/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/16/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Curry.

*Contiguous Counties:*

Oregon: Coos, Douglas, Josephine.  
California: Del Norte.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.215
Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for economic injury is 153820.

The States which received an EIDL Declaration # are Oregon, California.

(Catalog of Federal Domestic Assistance Number 59008)

**Linda E. McMahon,**  
*Administrator.*

[FR Doc. 2017-25504 Filed 11-24-17; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #15395 and #15396; ALABAMA Disaster Number AL-00083]

**Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alabama**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA-4349-DR), dated 11/16/2017.

*Incident:* Hurricane Nate.

*Incident Period:* 10/06/2017 through 10/10/2017.

**DATES:** Issued on 11/16/2017.

*Physical Loan Application Deadline Date:* 01/16/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/16/2018.

**ADDRESS:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 11/16/2017, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Baldwin, Choctaw, Clarke, Mobile, Washington  
The Interest Rates are:

	Percent
<i>For Physical Damage:</i> Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i> Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 153958 and for economic injury is 153960.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**  
*Associate Administrator for Disaster Assistance.*

[FR Doc. 2017-25489 Filed 11-24-17; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #15383; OREGON Disaster Number OR-00090 Declaration of Economic Injury]

**Administrative Declaration of an Economic Injury Disaster for the State of Oregon**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon, dated 11/16/2017.

*Incident:* Milli and Nash Fires.

*Incident Period:* 08/10/2017 through 09/25/2017.

**DATES:** Issued on 11/16/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/16/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Deschutes, Jefferson.  
*Contiguous Counties:*

Oregon: Crook, Harney, Klamath, Lake, Lane, Linn, Marion, Wasco, Wheeler.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.305
Non-Profit Organizations without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for economic injury is 153830.

The State which received an EIDL Declaration # is Oregon.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: November 16, 2017.

**Linda E. McMahon,**  
*Administrator.*

[FR Doc. 2017-25505 Filed 11-24-17; 8:45 am]

**BILLING CODE 8025-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2017-0051]

**Consolidating the Retirement Research Consortium and the Disability Research Consortium Into the Retirement and Disability Research Consortium**

**AGENCY:** Social Security Administration.  
**ACTION:** Notice.

**SUMMARY:** We intend to consolidate the current Retirement Research Consortium (RRC) and Disability Research Consortium (DRC) into a single program with a scope equivalent to the two currently existing programs. This single program will address issues related to Supplemental Security Income (SSI), and Retirement, Survivors, and Disability Insurance (RSDI).

**FOR FURTHER INFORMATION CONTACT:** Nick Love, Office of Research, Evaluation, and Statistics, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (202) 358-6049. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213, or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** The Office of Research, Evaluation, and Statistics anticipates issuing a request for

applications (RFA) for the Retirement and Disability Research Consortium (RDRC) during FY18. The RDRC will consolidate the current RRC and DRC into a single program with a scope equivalent to the two current programs. These programs support “centers” at universities and other private research institutions. The centers organize experts from around the country to produce research on Social Security programs and related topics. Both programs consist of five-year agreements and both five-year cycles are set to end in FY 2018. RFAs for the current programs are archived at [https://www.ssa.gov/oag/grants/ssagrant\\_archive.htm](https://www.ssa.gov/oag/grants/ssagrant_archive.htm). This anticipated single program will address issues related to the SSI and RSDI programs.

We intend to award five-year cooperative agreements to research centers of high merit that provide a comprehensive research program addressing issues in Social Security, retirement, and disability policy. This realignment in the research program will benefit the agency by increasing administrative efficiency and coordination. It may also provide greater flexibility for research centers; we will consider applications from research centers that provide both retirement and disability research as well as from smaller, specialized research centers (e.g., a center focused on issues relevant to the SSI program).

For the anticipated RFA, the Grants Management Official (GMO) will use the policies in 2 CFR 200 in conjunction with the policies and procedures for solicitation, evaluation, and award prescribed in the Social Security Administration’s internal Grants Administration Manual. The project period for all cooperative agreements awarded will cover the timeframe of September 2018 through September 2023. Section 1110 of the Social Security Act authorizes the agency to conduct research through cooperative agreements. We will make awards using a competitive review and approval process subject to open and free competition.

The following is an estimated timeline of actions associated with this program:

Action	Date*
1. Release of RFA package.	On or about February 2018.
2. Notice of Intent Due Date (Optional).	On or about April 2018.
3. Application Due Date ..	On or about May 2018.
4. Anticipated Award(s) ..	On or about September 2018.

\*Dates may change based upon administrative approval.

The GMO will publish the agency’s RFA, along with any amendments, and relevant questions and answers, electronically through the government-wide point of entry at [www.grants.gov](http://www.grants.gov). Interested parties can sign up for notifications of funding opportunities at: <https://www.grants.gov/web/grants/manage-subscriptions.html>.

**Nancy A. Berryhill,**  
*Acting Commissioner of Social Security.*  
 [FR Doc. 2017–25528 Filed 11–24–17; 8:45 am]  
**BILLING CODE 4191–02–P**

**DEPARTMENT OF STATE**

[Public Notice: 10206]

**30-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants**

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to December 27, 2017.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:* [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to S. Taylor, who may be reached at [PRA\\_Burdencomments@state.gov](mailto:PRA_Burdencomments@state.gov).

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Supplemental Questions for Visa Applicants.
- *OMB Control Number:* 1405–0226.
- *Type of Request:* Extension of a Currently Approved Collection.

- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS–5535.
- *Respondents:* Certain immigrant and nonimmigrant visa applicants worldwide who have been determined to warrant additional scrutiny in connection with terrorism, national security-related, or other visa ineligibilities.
- *Estimated Number of Respondents:* 70,500.
- *Estimated Number of Responses:* 70,500.
- *Average Time per Response:* 60 minutes.
- *Total Estimated Burden Time:* 70,500 hours.
- *Frequency:* Once per respondent’s application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The Department proposes requesting the following information, if not already included in an application, from a subset of visa applicants worldwide, in order to more rigorously evaluate such applicants for terrorism, national security-related, or other visa ineligibilities:

- Travel history during the last fifteen years, including source of funding for travel;
- Address history during the last fifteen years;
- Employment history during the last fifteen years;
- All passport numbers and country of issuance held by the applicant;
- Names and dates of birth for all siblings;
- Name and dates of birth for all children;



- Names and dates of birth for all current and former spouses, or civil or domestic partners;
- Social media platforms and identifiers, also known as handles, used during the last five years; and
- Phone numbers and email addresses used during the last five years.

Regarding travel history, applicants may be requested to provide details of their international or domestic (within their country of nationality) travel, if it appears to the consular officer that the applicant has been in an area while the area was under the operational control of a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel, and when possible, provide supporting documentation.

This information collection continues implementation of the directive of the President, in the *Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security* of March 6, 2017, to implement additional protocols and procedures focused on “ensur[ing] the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.” In substance, this proposed collection is the same as the collection that was requested through the emergency procedures in May 2017. The emergency approval limited the collection to a temporary six month approval, and these materials seek to extend that approval for three years. Consular posts worldwide regularly engage with U.S. law enforcement and partners in the U.S. intelligence community to identify characteristics of applicant populations warranting increased scrutiny. The additional information collected will facilitate consular officer efforts to apply more rigorous evaluation of these applicants for visa ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

Based upon the data since this collection began implementation in May 2017, the Department estimates that 70,500 applicants annually will be requested to respond to this collection. The Department bases this estimate on the fact that consular officers worldwide asked an approximately 25,000 applicants questions contained in this information collection between May 2017 and October 2, 2017.

Failure to provide requested information will not necessarily result in visa denial, if the consular officer determines the applicant has provided a credible explanation why he or she cannot answer a question or provide requested supporting documentation, such that the consular officer is able to conclude that the applicant has provided adequate information to determine the applicant’s eligibility to receive the visa. The collection of social media platforms and identifiers will not be used to deny visas based on applicants’ race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

#### Methodology

Department of State consular officers at visa-adjudicating posts worldwide will ask the proposed additional questions to resolve questions about an applicant’s identity or to vet for terrorism, national security-related, or other visa ineligibilities when the consular officer determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny. The additional questions may be sent electronically to the applicant or be presented orally or in writing at the time of the interview. Consular officers will be mindful that, unlike some other forms of personal information required from visa applicants, social media identifiers may afford the user anonymity. Posts will assess their respective operating environments and collect the social media identifier information from applicants in a manner that best safeguards its transmission from applicant to post. In furtherance of this collection, consular officers are directed not to request user passwords; engage or interact with individual visa applicants on or through social media when conducting assessments of visa eligibility; not to violate or attempt to violate individual privacy settings or controls; and not to use social media or assess an individual’s social media presence beyond established Department guidance. Consular staff are also directed in connection with this collection to take particular care to avoid collection of third-party information when conducting any social media reviews.

#### Edward Ramotowski,

*Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2017–25490 Filed 11–24–17; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

[Public Notice: 10211]

### Democratic People’s Republic of Korea (DPRK) Designation as a State Sponsor of Terrorism (SST)

In accordance with section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), and as continued in effect by Executive Order 13222 of August 17, 2001, section 620A(a) of the Foreign Assistance Act of 1961, Public Law 87–195, as amended (22 U.S.C. 2371(c)), and section 40(f) of the Arms Export Control Act, Public Law 90–629, as amended (22 U.S.C. 2780(f)), I hereby determine that the Democratic People’s Republic of Korea (DPRK) has repeatedly provided support for acts of international terrorism.

This notice shall be published in the **Federal Register**.

Dated: November 17, 2017.

**Rex W. Tillerson,**

*Secretary of State.*

[FR Doc. 2017–25547 Filed 11–24–17; 8:45 am]

**BILLING CODE 4710–AD–P**

## STATE JUSTICE INSTITUTE

### SJI Board of Directors Meeting, Notice

**AGENCY:** State Justice Institute.

**ACTION:** Notice of meeting.

**SUMMARY:** The SJI Board of Directors will be meeting on Monday, December 4, 2017 at 1:00 p.m. The meeting will be held at SJI Headquarters in Reston, Virginia. The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2018, and other business. All portions of this meeting are open to the public.

**ADDRESSES:** State Justice Institute Headquarters, 11951 Freedom Drive, Suite 1020, Reston, Virginia 20190.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, [contact@sjj.gov](mailto:contact@sjj.gov).

**Jonathan D. Mattiello,**

*Executive Director.*

[FR Doc. 2017–25534 Filed 11–24–17; 8:45 am]

**BILLING CODE P**

**SURFACE TRANSPORTATION BOARD****[Docket No. AB 1258]****Alloy Property Company, LLC—  
Adverse Abandonment—Chicago  
Terminal Railroad in Chicago, Ill.**

On October 11, 2017, Alloy Property Company, LLC (Alloy or Applicant), filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or adverse, abandonment of approximately 2.625 miles of the remaining portions of the C&E and Bloomingdale lines of the Chicago Terminal Railroad Company (CTM) in Chicago, Cook County, Ill. (the Line). The Line originates at the western side of North Elston Avenue and proceeds east and south to Goose Island to a terminus near the intersection of North Branch Street and Halsted Street. There are no stations associated with the Line. The Line traverses United States Postal Service Zip Codes 60614 and 60642. The application is available on the Board's Web site at <http://www.stb.gov>, or a copy can be secured from Alloy's counsel, whose name and address appear below.

Alloy recently purchased property in the North Branch area of Chicago and portions of Alloy's property are traversed by the Line. According to Alloy, no rail shipments have originated or terminated on the Line since January 2015. Alloy states that any businesses on the Line that once could have used rail transportation have ceased operations, relocated, or converted to the use of non-rail transportation. Alloy also states that its application is supported by local landowners and the City of Chicago.

In a decision served on August 16, 2017, Alloy was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR pt. 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, Alloy was granted an exemption from 49 U.S.C. 10903(c)(2) and waiver of 49 CFR § 1152.10–14 and § 1152.24(e)(1) pertaining to System Diagram Maps; exemption from 49 U.S.C. 10903(a)(3)(B) and waiver of 49 CFR 1152.20(a)(3) regarding posting at stations and terminals; waiver of 49 CFR 1152.21 pertaining to the form of the notice of intent; waiver and modification of certain required elements in an adverse abandonment application, specifically 49 CFR 1152.22(a)(5) (SDM information), § 1152.22(b) (condition of property), § 1152.22(c) (service provided), and § 1152.22(d) (revenue

and cost data), and § 1152.22(i) (draft **Federal Register** notice); waiver of the requirement under 49 CFR 1152.29(e)(2) that the abandonment be consummated within one year after the abandonment application; and exemption from 49 U.S.C. 10904 and waiver of 49 CFR 1152.27, which govern an offer of financial assistance (OFA) to continue common carrier rail service.

Alloy states that the Line does not contain federally granted rights-of-way. Any documentation in Alloy's possession will be made available promptly to those requesting it. Alloy's entire case-in-chief for adverse abandonment was filed with the application.

Alloy states that there is no ongoing rail service on the Line, so there would be no employees affected by an adverse abandonment. Nevertheless, the interests of any railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

Any interested person may file either written comments concerning the proposed adverse abandonment and discontinuance, or protests (including protestant's entire opposition case). Persons who may oppose the proposed adverse abandonment and discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment and discontinuance who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. In a decision served October 25, 2017, a discovery dispute between the parties was referred to an Administrative Law Judge at the Federal Energy Regulatory Commission. A deadline for comments concerning the proposed adverse abandonment and discontinuance, as well as any reply from Alloy, will be set by a future Board decision upon resolution of the discovery issues.

Any request for an interim trail use/railbanking condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment and discontinuance application. Each trail use request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27). A deadline for any request for an interim trail use/railbanking

condition will be set by a future Board decision upon resolution of the discovery issues.

All filings in response to this notice must refer to Docket No. AB 1258 and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; (2) Alloy's counsel, Matthew J. Warren, Sidley Austin LLP, 1501 K Street NW., Washington, DC 20005.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "[www.stb.gov](http://www.stb.gov)" Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR pt. 1152, every document filed with the Board must be served on all parties to this adverse abandonment and discontinuance proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) prepared by the Board's Office of Environmental Analysis (OEA) was served on November 13, 2017. Any other persons who would like to obtain a copy of the EA may contact OEA by phone at the number listed below. The deadline for submission of comments on the EA is December 11, 2017. The comments received will be addressed in the Board's decision. A supplemental EA may be issued where appropriate.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment/discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at "[WWW.STB.GOV](http://WWW.STB.GOV)."

Decided: November 21, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2017–25512 Filed 11–24–17; 8:45 am]

**BILLING CODE 4915–01–P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2017–0313]

**60-Day Notice of Proposed Information Collection: Driver Commuting Practices Survey****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice and request for comments.

**SUMMARY:** FMCSA is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, FMCSA is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

FMCSA proposes a survey to inquire about driver commuting practices to fulfill Section 5515 of the Fixing America's Surface Transportation Act, 2015 (FAST Act). Section 5515 of the FAST Act requires FMCSA to conduct a study on the safety effects of motor carrier operator commutes exceeding 150 minutes. The administrator is then required to submit a report to Congress containing the findings of the study.

The survey proposed within this information collection request is seeking to gather information on the prevalence of excessive (greater than 150 minutes) driver commuting in the commercial motor vehicle (CMV) industry, including the number and percentage of drivers who commute; the distances traveled, time zones crossed, time spent commuting, and methods of transportation used; research on the impact of excessive commuting on safety and CMV driver fatigue; and the commuting practices of CMV drivers and policies of motor carriers.

**DATES:** Comments must be received on or before January 26, 2018.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2017–0313 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building,

Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and the docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Nicole Michel, Research Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by email at [nicole.michel@dot.gov](mailto:nicole.michel@dot.gov), or by telephone at (202) 366–4354. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

*Title:* Impact of Driver Commuting on Safety

*OMB Control Number:* 2126–00XX.

*Type of Request:* New information collection.

*Respondents:* A random sample of licensed CMV operators, to include both freight operators and those with a passenger bus endorsement.

*Estimated Number of Respondents:* 500 CMV drivers (250 each of freight drivers and passenger bus drivers).

*Estimated Time per Response:* The estimated average time for a driver to complete the survey is 20 minutes.

*Expiration Date:* N/A. This is a new information collection request (ICR).

*Frequency of Response:* This survey requires a one-time response per CMV operator, with an estimated total of 500 respondents (250 each of freight drivers and passenger bus drivers).

*Estimated Total Annual Burden:* The estimated total annual burden is 166.7 hours, or \$3,945.79 (based on an average labor cost of \$23.67 per hour for each responding driver).

**I. Background**

On December 4, 2015, the FAST Act was signed into law (Pub. L. 114–94, 129 Stat. 1312, 1557 (Dec. 4, 2015)). Section 5515 of the FAST Act directs the FMCSA Administrator to “conduct a study on the safety effects of motor carrier operator commutes exceeding 150 minutes” (subsection (a)). The Act further specifies that a report containing the findings of this study should be submitted to Congress no later than 18 months after the date of enactment of the Act (subsection (b)). FMCSA must complete this information collection to meet the specified congressional requirements set forth in the FAST Act.

Additionally, during the 114th Congress (2015–2016), legislation entitled the Truck Safety Act was introduced. This legislation provided greater context to inform study of this area (S. 1739, 114th Cong. § 7) by proposing the following:

**SECTION. 7. STUDY ON COMMERCIAL MOTOR VEHICLE DRIVER COMMUTING.**

(a) **EFFECTS OF EXCESSIVE COMMUTING.**—The Administrator of the FMCSA shall conduct a study of the effects of excessive commuting on safety and commercial motor vehicle driver fatigue.

(b) **STUDY.**—In conducting the study, the Administrator shall consider—

- (1) the prevalence of excessive driver commuting in the commercial motor vehicle industry, including the number and percentage of drivers who commute;
- (2) the distances traveled, time zones crossed, time spent commuting, and methods of transportation used;
- (3) research on the impact of excessive commuting on safety and commercial motor vehicle driver fatigue;
- (4) the commuting practices of commercial motor vehicle drivers and policies of motor carriers;
- (5) the FMCSA regulations, policies, and guidance regarding excessive driver commuting; and
- (6) any other matters the Administrator considers appropriate.

In the past two decades, as the number of workers has increased and the distance to affordable housing has also increased in most metropolitan areas, commuting times have increased in the United States. According to the *2015 Urban Mobility Scorecard*,<sup>1</sup> travel delays due to traffic congestion caused drivers to waste more than 3 billion gallons of fuel and kept travelers stuck in their cars for nearly 7 billion extra hours (42 hours per rush-hour commuter).

Long commuting times can adversely affect commercial motor vehicle (CMV) drivers in multiple ways, for example:

- *Compromising off-duty time.* Long commuting times can reduce a driver's available off-duty time for sleep and personal activities. This can lead to excessive fatigue while on duty, creating safety concerns for both the CMV driver and other drivers on the roads.

- *Impacting driver health.* A recent study was conducted that monitored 4,297 adults from 12 metropolitan Texas counties. In this region, 90 percent of people commute to work. The study found that the drivers who have long commuting times were more likely to have poor cardiovascular health and be less physically fit.<sup>2</sup> This study showed that people who commute long distances to work weigh more, are less physically active, and have higher blood pressure.

The objective of the survey proposed in this ICR is to learn more about the following CMV driver characteristics:

- Work history;
- Commuting time, transportation mode, and recording of that time;
- Driving schedules;
- Rests and breaks;
- Miles driven annually; and
- Demographics.

## II. Data Collection Plan

The information collection is a one-time, Web-based collection, including surveys of current and past drivers of freight and passenger vehicles. The survey will be entirely online. There will be no paper survey. The general survey approach and design is as follows:

1. FMCSA will provide a random sample of 12,000 drivers based on recent Motor Carrier Management Information System (MCMIS) data,

augmented with the drivers' last known mailing address, obtained by cross-referencing Commercial Driver's License Information System (CDLIS) data with the licensing States' CDL driver histories. The samples will be divided into one list for drivers who operate (or previously operated) freight vehicles and a second list for those who drive (or previously drove) passenger-carrying vehicles.

2. Using a mail-Web methodology, the driver commute survey will be sent out by the research team, on behalf of FMCSA, to the 12,000 selected drivers identified in step 1. These drivers will be solicited to complete an online survey, using a recruitment letter (with a \$2 pre-incentive), a reminder postcard, and a second follow-up letter. The letter will inform the drivers that they will receive a check for \$10 upon completion of the survey, which is expected to average 20 minutes to complete. Our initial expectation is that 4.17 percent of the 12,000 (500) will complete the survey on the Web. The burden analysis is based on this figure of 500 responses.

## III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) prohibits agencies from conducting information collection (IC) activities until they analyze the need for the collection of information and how the collected data will be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time required to complete a particular form. The Agency submits its IC analysis and burden estimate to OMB as a formal ICR; the Agency cannot conduct the information collection until OMB approves the ICR.

## V. Request for Public Comments

FMCSA asks for comment on the IC requirements of this study. Comments can be submitted to the docket as outlined under **ADDRESSES** at the beginning of this notice. You are asked to comment on any aspect of this information collection, including:

1. Whether the proposed collection is necessary for the performance of FMCSA's functions.
2. The accuracy of the estimated burden.
3. Ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information.
4. Ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: November 17, 2017.

**G. Kelly Regal,**

*Associate Administrator, Office of Research and Information Technology.*

[FR Doc. 2017–25526 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0025]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its decision to deny applications from 109 individuals who requested an exemption from the vision standard in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a CMV in interstate commerce.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

<sup>1</sup> Schrank, David; Eisele, Bill; Lomax, Tim; and Bak, Jim. (2015.) *2015 Urban Mobility Scorecard*. Texas A&M Transportation Institute and Inrix, Inc., available at: <http://static.tti.tamu.edu/tti.tamu.edu/documents/mobility-scorecard-2015.pdf>.

<sup>2</sup> Hoehner, Christine; Barlow, Carolyn; Allen, Peg; and Schootman, Mario. (2012.) *Commuting Distance, Cardiorespiratory Fitness, and Metabolic Risk*. *American Journal of Preventive Medicine* 42(6): 571–578.

## II. Background

FMCSA received applications from 109 individuals who requested an exemption from the vision standard in the FMCSRs.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(10).

## III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption."

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

## IV. Conclusion

The Agency has determined that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(10). Therefore, the 109 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(10).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 33 applicants had no experience operating a CMV:

Leaslie T. Allen (SC)  
 Harryson F.R. Barragan (CA)  
 Ken A. Barrow (LA)  
 Corey A. Becker (NE)  
 Kathryn W. Brunt-Avunduk (NJ)  
 Speedi G. Burrell (RI)  
 Indigo J. Curtis (GA)  
 Larry D. Darden (NC)  
 Collin J. D'Brant (NY)  
 Abdulrahman M. Edle (MN)

Teorie K. Evans (IN)  
 Justin S. Gantt (NC)  
 Brad K. Humphrey (OH)  
 Matthew W. Jordan (TN)  
 Matthew J. LaFeldt (MI)  
 Alex W. Leath (VA)  
 Jerry P. Ledet, Jr. (LA)  
 Richard K. Lowman (PA)  
 Erik D. Manz (OK)  
 Carlos R. McCarthy (NH)  
 Mark L. Meriweather (KY)  
 Mark W. Modzelewski (NJ)  
 Jerry Nicolas (NJ)  
 Jose A. Ortega (FL)  
 Michael T. Quiggins (IN)  
 Gary M. Shoultz (IN)  
 Kerry S. Staker (WY)  
 Sherwood W. Swick (ID)  
 Brian Thompson (KY)  
 Robby L. Tovrea (IA)  
 Jimmy Travis (NJ)  
 James E. Turturici (AL)  
 Rodney J. Watkins (NC)

The following 18 applicants did not have three years of experience driving a CMV on public highways with their vision deficiencies:

Samuel J. Bagwell (MO)  
 Denis Cuzimencov (NC)  
 Howard R. Funderburk (WA)  
 Lonnie J. Gains (MD)  
 DeMario D. Gordon (TX)  
 Stephen L. Hickinson (NJ)  
 James S. Hosmer (AL)  
 John K. Johnson (TX)  
 Shane E. Johnson (KY)  
 John E. Lewis (IN)  
 Robert E. McMahon (NV)  
 Rodolfo D. Meza (MD)  
 Georgio D. Rapposelli (PA)  
 Darrel J. Roy (WA)  
 Michael D. Saltsman (KY)  
 Curtis L. Shivers (IL)  
 Adam L. Temple (GA)  
 Stephen Wilson (PA)

The following eight applicants did not have three years of recent experience driving a CMV with the vision deficiency:

Joseph R. Burroughs (AL)  
 Allen E. Jennings (ID)  
 Michael S. Lomax (LA)  
 Brian K. Manca (MA)  
 Charles Reid (NJ)  
 Ernest M. Smith, Jr. (LA)  
 Thomas VanPool (OK)  
 Danny R. Wood (NC)

The following seven applicants did not have sufficient driving experience during the past three years under normal highway operating conditions (gaps in driving record):

Robie F. Abbott (WV)  
 David J. Carter (OR)  
 John M. Ford (NY)  
 Joseph B. Fullen (TX)  
 Abdulsalam M. Halool (MI)

Frank M. Howell (PA)  
 Dwayne S. Tiffany (UT)

The following six applicants were denied for multiple reasons:

Russell D. Kraemer (MO)  
 Julie D. Larson (WY)  
 Larry D. Neely (IL)  
 Richard Nielsen (IL)  
 Philip P. Phegley (IN)  
 Kenneth E. Warbington (GA)

The following two applicants have not had stable vision for the preceding three year period:

Donald L. Shay (MO)  
 Norris V. Watson (AL)

The following three applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Earl T. Baker (KY)  
 Ryan S. Stauffer (MT)  
 Robert Williams (NC)

The following 27 applicants will not be driving interstate, intrastate commerce, or are not required to carry a DOT medical card:

Percy L. Anderson (IL)  
 Michael Beaudoin (TX)  
 Victor M. Benedith (NY)  
 Mingle Blake (FL)  
 Ernesto Castillo (CA)  
 Randolph L. Davidson (CA)  
 William A. Dickinson (WA)  
 Charles M. Dixon, Jr. (OH)  
 David A. Faudoa (AZ)  
 Kenneth A. Floyd (FL)  
 Maxie L. Gentry (VA)  
 Bryan K. Hall (NY)  
 James C. Hall (WA)  
 Jamahon L. Henderson (OH)  
 Antonio Ibarrah-Ramirez (OK)  
 Lon J. Knoshal (MN)  
 Brent D. Landry (LA)  
 Donald B. Marsh (MD)  
 Chris G. Mosley (SC)  
 Jonathan P. Mott (WI)  
 Javier T. Ramirez (TX)  
 Edward H. Riglioni, Jr. (FL)  
 Francisco L. Rodriguez (CA)  
 Jason S. Spurlock, Sr. (LA)  
 Roger L. Sutton (LA)  
 Efrain S. Villalobos (CA)  
 Anthony W. Zwolinski (MI)

The following five applicants perform transportation for the Federal government, state, or any political subdivision of the state:

Nathan N. Botsch (AZ)  
 Derrick A. Hardy (DC)  
 Lindsey Manzi (PA)  
 Jeffery Radermacher (ND)  
 John R.A. Taylor (VA)

Issued on: November 17, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017-25522 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[FMCSA Docket No. FMCSA–2017–0042]

**Qualification of Drivers; Exemption Applications; Diabetes Mellitus****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 43 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on September 26, 2017. The exemptions expire on September 26, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****I. Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**II. Background**

On August 24, 2017, FMCSA published a notice announcing receipt of applications from 43 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 40215). The public comment period ended on September 25, 2017, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

**III. Discussion of Comments**

FMCSA received one comment in this proceeding. Vicky Johnson stated that Minnesota DVS has no objections in granting exemptions to the following Minnesota drivers: Bradley S. Hanson, Mutasim S. Mohamed, and Jacob T. Streifel.

**IV. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 24, 2017, **Federal Register** notice (82 FR 40215) and will not be repeated in this notice.

These 43 applicants have had ITDM over a range of one to 29 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe

hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**V. Conditions and Requirements**

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**VI. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VII. Conclusion**

Based upon its evaluation of the 43 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above: David G. Anderton (AK) John N. Bailey, III (FL)

Wells R. Betts (DE)  
 Clyde R. Bigam, Jr. (KS)  
 Sten R. Brote (MA)  
 Michele D. Budrys (MA)  
 Keith P. Burk (PA)  
 Robert E. Conner (OH)  
 George L. Coombs, Jr. (NH)  
 Isaiah B. Deal (ND)  
 James M. Doiron (FL)  
 Daniel T. Gazalie (PA)  
 Gary V. Grimm (CA)  
 Joe A. Gritten (IN)  
 Bradley S. Hanson (MN)  
 Paul F. Herburger (IA)  
 Robert H. Hopper (MO)  
 Rhonda V. Howe (PA)  
 Melvin L. Hutcheson (AL)  
 Tyler W. Keel (TX)  
 Wyatt E.S. Kitchens (GA)  
 Gerald A. Korkow (SD)  
 Richard B. Maurer (PA)  
 James M. McDonald (IA)  
 Mutasim Y.S. Mohamed (MN)  
 Paul S. Montell (PA)  
 James R. Pemberton (NJ)  
 Charles E. Perdue, Jr. (OH)  
 Christopher L. Recla (WI)  
 Jon C. Reeves (OR)  
 Hermes L. Rios (MD)  
 Abimael Rodriguez (CA)  
 Dustin A. Rudolphi (PA)  
 Jose A. Sanchez (CO)  
 James A. Schmidt (MO)  
 Jacob T. Sigmon (IL)  
 David C. Stouffer (PA)  
 Jacob T. Streifel (MN)  
 Jason M. Townsend (OH)  
 Johann J. Trana (ND)  
 Jacob C. Villa (OR)  
 Raymond R. Wade (IN)  
 Edwin M. Yereance (NJ)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: November 17, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017-25521 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2015-0118]

**Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for three individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on October 22, 2017. The exemptions expire on October 22, 2019. Comments must be received on or before December 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202-366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2015-0118 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET,

Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day ET, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical

conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The three individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

## II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

## III. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315, each of the three applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The three drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

As of October 22, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for

obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: Joshua Abel (MD); Jeremy H. Fryburg (PA); and Anthony E. Martens (SD).

The drivers were included in docket number FMCSA–2015–0118. Their exemptions are applicable as of October 22, 2017, and will expire on October 22, 2019.

## IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VI. Conclusion

Based upon its evaluation of the three exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 17, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–25520 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–FMCSA–2017–0251]

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** FMCSA announces its decision to deny applications from 35 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

### SUPPLEMENTARY INFORMATION:

#### I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.



## II. Background

FMCSA received applications from 35 individuals who requested an exemption from the FMCSRs prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV from operating CMVs in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8).

## III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

## IV. Conclusion

The Agency has determined that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the 35 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 25 applicants do not meet the minimum time requirement for being seizure-free, either on or off of anti-seizure medication:

Terrence Aires (CO)  
Zackary Anderson (KS)  
Adolfito Arciaga, Jr. (CA)  
Melissa N. Barregan (NC)  
Bret R. Calderwood (PA)  
Paul E. Capozzi (MA)  
William F. Castle (IA)  
Norma Coffin (NY)  
Joel Duffina (NH)  
Robert R. Freeman (NC)  
Albert Giovianazzi (NJ)  
Cecilia L. Gonzalez (CA)  
Peter M. Gustey (OR)  
Phillip W. Helms (NC)  
Jadwin Johnson (OH)  
Franklin King (AR)  
Buck Konkol (WI)  
Shaun G. McChesney (ND)  
Donald McGlamery (NC)  
Anthony J. Melillo (CT)  
Joseph M. Ruley (IA)  
Lucas T. Sorey (NC)  
Robert C. Spencer (FL)  
David J. Tune (MN)  
Robbie Weiland (WI)

The following applicant did not obtain the support of his physician to operate a vehicle in interstate commerce:

Taylor Valentine (NY)

The following nine applicants are intrastate drivers:

Anthony Anello, III (NJ)  
Sonny Chase (MN)  
Thomas G. Davis (PA)  
Jarel Hathaway (UT)  
Joe L. King, Jr. (NC)  
Edward C. McCachren (NJ)  
Sean Plover (PA)  
William Swick (MI)  
Kevin D. Weber (WV)

Issued on: November 17, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017-25518 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-EX-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0252]

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from two individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons

with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before December 27, 2017.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2017-0252 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can

be reviewed at <http://www.dot.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The two individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria<sup>1</sup> to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The advisory criteria states the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person’s condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Before certification is considered, it is suggested that a six-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.*, drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a five-year period or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders, (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” Since the January 15, 2013 notice, the Agency has published additional notices granting requests from

individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency’s Medical Expert Panel (MEP) (78 FR 3069).

**II. Qualifications of Applicants**

*David W. Pamperin*

Mr. Pamperin, 55, has a history of a seizure disorder and has remained seizure free since 2006. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2007. His physician states that he is supportive of Mr. Pamperin receiving an exemption.

*Sury L. Seijas*

Mr. Seijas, 34, has a history of epilepsy and has remained seizure free since 2007. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2007. His physician states that he is supportive of Mr. Seijas receiving an exemption.

**III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

**IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2017-0252 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for

<sup>1</sup> See [http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391\\_171.a](http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a) and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

#### V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2017–0252 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

Issued on: November 17, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–25519 Filed 11–24–17; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0294; FMCSA–2012–0094; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117]

#### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 10 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on August 13, 2017. The exemptions expire on August 13, 2019. Comments must be received on or before December 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical

Programs Division, 202–366–4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0294; FMCSA–2012–0094; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

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*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day ET, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any

personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

#### I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The 10 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

#### II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

### III. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 10 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 13, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Eric J. Barnwell (MI)  
John W. Boerth (WI)  
Don C. Darbyshire (IA)  
Todd A. Davis (WI)  
Daniel Dellaserra (CA)  
Charles T. Gray (OK)  
Eric A. Hilmer (WI)  
David Kietzman (WI)  
Dennis Klamm (MN)  
Brian J. Wiggins (ID)

The drivers were included in docket number FMCSA-2010-0203; FMCSA-2011-0389; FMCSA-2012-0050; FMCSA-2012-0294; FMCSA-2012-0094; FMCSA-2014-0382; FMCSA-2015-0116; FMCSA-2015-0117. Their exemptions are applicable as of August 13, 2017, and will expire on August 13, 2019.

### IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the

stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

### V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

### VI. Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 17, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017-25517 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-27801; FMCSA-2007-28536; FMCSA-2008-0175; FMCSA-2008-0267; FMCSA-2009-0207; FMCSA-2011-0192; FMCSA-2013-0181; FMCSA-2013-0182]

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 99

individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before December 27, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202-366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket Nos. FMCSA-2007-27801; FMCSA-2007-28536; FMCSA-2008-0175; FMCSA-2008-0267; FMCSA-2009-0207; FMCSA-2011-0192; FMCSA-2013-0181; FMCSA-2013-0182 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

*Instructions:* Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or

Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day ET, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

### I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The 99 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency’s July 2000 study entitled “A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as

Directed by the Transportation Act for the 21st Century.” The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

### II. Qualifications of Applicants

As of October 3, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from

driving CMVs in interstate commerce (76 FR 47291; 76 FR 61139):

Michael J. Alexander (MO)  
Dean A. Chamberlin (NE)  
Ronald D. Fatka (IA)  
Frank B. Hernandez (MN)  
Dale A. Iverson (UT)  
John H. Krastel, Jr. (MD)  
Edward Linhart (MA)  
Larry D. Matson (MT)  
David W. Payne (KS)  
Jim B. Robertson II (KY)  
Donald M. Rush, Jr. (GA)  
Barry A. Sircy (KY)  
John S. Starchevich (IA)  
Michael B. Tortora (VT)  
Charlotte C. Watson (CA)  
Shaun M. Wheeler (CT)

The drivers were included in docket number FMCSA-2011-0192. Their exemptions are applicable as of October 3, 2017, and will expire on October 3, 2019.

As of October 15, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 43 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (72 FR 45480; 72 FR 58360; 73 FR 45519; 73 FR 61188; 78 FR 50486; 78 FR 65031):

Scott M. Aitcheson (MI)  
Robert V. Balmes (IL)  
Kenneth M. Brinker (SD)  
Daniel A. Brown (IN)  
Floyd G. Burbach (SD)  
Frederick J. Caldarelli III (KS)  
Jay P. Cave (IL)  
William J. Compton (MI)  
Brian R. Current (IA)  
Mark A. Davis (AR)  
Todd J. Donnelly (IA)  
Carmine J. Fossile (MA)  
Steven M. French (MI)  
Philip P. Gray (VA)  
John L. Hansen (MT)  
Michael G. Harp (OK)  
Darin D. Harries (MN)  
James M. Holland (WA)  
William E. Hollowell (MI)  
Matthew S. Hooker (IN)  
Cindy L. Hushin-Brink (PA)  
Gregory A. Iverson (IA)  
Bradley M. Johnson (ID)  
Mark A. Jones (WI)  
Michael J. Keating (IL)  
Richard D. Knoche (IL)  
Jonathan D. Koehn (NE)  
Edward M. Mason (KY)  
Harold W. McCullough (NE)  
Kurt V. Miller (IL)  
Tyree L. Murdock II (FL)  
Thomas L. Nesbit (PA)  
Richard Rodriguez (KS)  
Scott D. Schultz (MN)  
Mark W. Seem (IN)

Marvin R. Shipman (GA)  
 Chris W. Smaltz (AZ)  
 Randy E. Veit (IL)  
 Edwin C.E. Whitcomb (ND)  
 Steven S. Whitt, Sr. (MO)  
 Derek J. Wright (AL)  
 Donald W. Yeager (PA)  
 Mick B. Zoske (IA)

The drivers were included in one of the following docket numbers: FMCSA–2007–27801; FMCSA–2008–0175; FMCSA–2013–0182. Their exemptions are applicable as of October 15, 2017, and will expire on October 15, 2019.

As of October 18, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, Justin R. Freeman (ID) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 38435; 78 FR 63294).

This driver was included in docket number FMCSA–2013–0181. The exemption is applicable as of October 18, 2017, and will expire on October 18, 2019.

As of October 19, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (72 FR 50442; 72 FR 59332; 74 FR 41486; 74 FR 53583):

Jim E. Chester (IN)  
 Blaine H. Holmes (UT)  
 James R. Hudson (AZ)  
 Roger L. Kaufman (KY)  
 Clifford L. Rayl (IN)  
 Steven J. Shaw (NV)  
 Scott L. Stamstad (WI)  
 Kendell R. Strassman (WI)  
 Maurice L. Wedel (KS)

The drivers were included in one of the following docket numbers: FMCSA–2007–28536; FMCSA–2009–0207. Their exemptions are applicable as of October 19, 2017, and will expire on October 19, 2019.

As of October 22, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 9 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (73 FR 52451; 73 FR 63041):

Michael B. Bennington, Sr. (PA)  
 Larry J. Eischens (SD)  
 David J. Hanzl (NY)  
 Thomas R. Jones (OH)  
 John G. Schaible, Jr. (NY)  
 Rory J. Seleman (IL)  
 Chase M. Wells (NY)  
 Laurie E. White (NY)  
 Craig E. Wolf (IL)

The drivers were included in docket number FMCSA–2008–0267. Their exemptions are applicable as of October 22, 2017, and will expire on October 22, 2019.

As of October 23, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 38435; 78 FR 63294):

Craig W. Blackner (UT)  
 John L. Fischer (ND)  
 Douglas E. Gibbs (TX)  
 Clarence H. Holliman Jr. (MS)  
 Tracy S. Johnson (FL)  
 Chad D. Labonte (ID)  
 Jason J. Marks (LA)  
 Keith R. McKeever (PA)  
 Alberto Ramirez (CA)  
 Brian S. Ruth (AK)  
 Ronald S. Smith (NJ)  
 Lawrence E. Starks Sr. (IN)  
 Calvin C. Wallingford (NY)

The drivers were included in docket number FMCSA–2013–0181. Their exemptions are applicable as of October 23, 2017, and will expire on October 23, 2019.

As of October 28, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, Ricky A. Root (IL) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 50486; 78 FR 65031).

This driver was included in docket number FMCSA–2013–0182. The exemption is applicable as of October 28, 2017, and will expire on October 28, 2019.

As of October 30, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 50486; 78 FR 65031):

Peter Engel (PA)  
 Jhon A. Fitzgerald (ME)  
 Lewis E. Forrester (PA)  
 Ray Harrison (MD)  
 Charles LaBruno (PA)  
 Shawn E. Marks (PA)  
 Donald G. Staggs (CA)

The drivers were included in docket number FMCSA–2013–0182. Their exemptions are applicable as of October 30, 2017, and will expire on October 30, 2019.

### III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public

comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2007–27801; FMCSA–2007–28536; FMCSA–2008–0175; FMCSA–2008–0267; FMCSA–2009–0207; FMCSA–2011–0192; FMCSA–2013–0181; FMCSA–2013–0182 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

### IV Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2007–27801; FMCSA–2007–28536; FMCSA–2008–0175; FMCSA–2008–0267; FMCSA–2009–0207; FMCSA–2011–0192; FMCSA–2013–0181; FMCSA–2013–0182 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

Issued on: November 17, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–25524 Filed 11–24–17; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA–2017–0096]

**Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity**

**AGENCY:** National Highway Traffic Safety Administration, U.S. Department of Transportation.

**ACTION:** Request for public comment on a proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which the National Highway Traffic Safety Administration (NHTSA) intends to seek OMB approval.

**DATES:** Written comments should be submitted by January 26, 2018.

**ADDRESSES:** You may submit comments identified by Docket No. NHTSA–2017–0096 through one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. Telephone: 202–366–9826.

- *Fax:* 202–493–2251.

*Instructions:* All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://www.dot.gov/privacy.html>.

*Docket:* For access to the docket to read comments received, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For programmatic issues, contact Barbara Sauers, Regional Operations and Program Delivery, NRO–011, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: 202–366–0144. For legal issues and background information, contact Roland (R.T.) Baumann III, Office of the Chief Counsel, NCC–300, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: 202–366–1834.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

In compliance with these requirements, NHTSA asks for public

comments on the following proposed collection of information for which the agency is seeking approval from OMB:

*OMB Control Number:* Not assigned.

*Title:* State Highway Safety Grant Programs.

*Form Numbers:* N/A (Highway Safety Plan, Annual Report, Assessment).

*Type of Review:* New Collection.

*Requested Expiration Date of Approval:* Three years from the approval date.

*Summary of the Collection of Information:* The Fixing America's Surface Transportation Act (FAST), Public Law 114–94, authorizes the National Highway Traffic Safety Administration (NHTSA) to issue highway safety grants to States under Chapter 4 of Title 23, U.S.C. Specifically, these grant programs include the Highway Safety Program grants (23 U.S.C. 402 or Section 402), the National Priority Safety Program grants (23 U.S.C. 405 or Section 405) and a separate grant on racial profiling data collection contained in a previous authorization that was revised and restored under the FAST Act (Pub. L. 109–59, Sec. 1906 or Section 1906, as amended by Sec. 4011, Pub. L. 114–94).

For all of these grants, as directed in statute, NHTSA uses a consolidated application process that relies on the Highway Safety Plan (HSP) States submit under the Section 402 program as a single application. The information required to be submitted for these grants includes the HSP consisting of information on the highway safety planning process, performance report, performance plan, problem identification, highway safety countermeasure strategies, projects and funding amounts, certifications and assurances, and application materials that cover Section 405 grants and the reauthorized Section 1906 grant.<sup>1</sup> States also must submit an annual report evaluating their progress in achieving performance targets. In addition, as part of the statutory criteria for Section 405 grants covering the areas of occupant protection, traffic safety information system improvement and impaired driving countermeasures, States may be required to receive assessments of their State programs in order to receive a

<sup>1</sup> Section 405 grants cover the following: Occupant Protection Grants; State Traffic Safety Information System Improvements Grants; Impaired Driving Countermeasures Grants (including Alcohol-Ignition Interlock Grants and 24–7 Sobriety Program Grants); Distracted Driving Grants; Motorcyclist Safety Grants; State Graduated Driver Licensing Incentive Grants; and Nonmotorized Safety Grants. Section 1906 is a separate racial profiling data collection grant.

grant.<sup>2</sup> States must provide information and respond to questions as part of the assessment process.

Consistent with the statute, NHTSA has implemented an interim final rule that creates uniform procedures for States to apply for grant funds (81 FR 32554, May 23, 2016), and will issue a final rule in the near future. These procedures specify the information that is required to be submitted to receive a grant and the type of information required to verify performance under the grants. Under these efforts, NHTSA has taken actions to streamline the required application procedures, including the expanded use of an electronic submission process identified as the Grants Management Solutions Suite (GMSS). This system will replace the current grants management tracking system and allows States to apply for and receive grants electronically. NHTSA plans to introduce an updated version of GMSS for fiscal year 2019. Implementation will occur after several participating States have completed system usability testing, and NHTSA has reviewed and considered any feedback provided.

As indicated above, States may be required to receive an assessment of certain covered programs in order to be eligible for some grants under Section 405. Separate from these requirements, States also may request assessments in these areas at their discretion. NHTSA uses two different assessment approaches based on the traffic safety area covered. For occupant protection and impaired driving, assessments are based on NHTSA's *Uniform Guidelines for State Highway Safety Programs*, which are required by Congress and periodically updated through a process that seeks public comment.<sup>3</sup> State programs are assessed against these uniform guidelines by a team of subject matter experts. The assessment team

<sup>2</sup> Under occupant protection grants, one of the criterion that a State with a lower belt use rate may use to get a grant is to complete an assessment of its occupant protection program once every three years (23 U.S.C. 405(b)(3)(B)(ii)(VI)(aa)); and another criterion is a comprehensive occupant protection program that includes a program assessment conducted every five years as one of its elements (23 U.S.C. 405(b)(3)(B)(ii)(V)(aa); 23 CFR 1300.21(e)(5)(i)). Under traffic safety system information system improvement grants, a State must have an assessment of its highway safety data and traffic records system once every 5 years in order to receive a grant (23 U.S.C. 405(c)(3)(E)). Under impaired driving countermeasure grants, a State with high average impaired driving fatality rates must have an assessment of its impaired driving program once every 3 years in order to receive a grant. (23 U.S.C. 405(d)(3)(C)(i)(I)).

<sup>3</sup> The *Uniform Guidelines for State Highway Safety Programs* are available online at <https://one.nhtsa.gov/nhtsa/whatsapp/tea21/tea21programs/index.htm>.

produces a final report with recommendations on how the State can improve the effectiveness of its program. As part of the process, States provide written materials in response to requests from the assessment team and participate in a comprehensive interview process. For traffic safety information systems, States respond to questions based on NHTSA's *Traffic Records Program Assessment Advisory* (DOT HS 811 644), which describes an ideal traffic records system. The questions cover nine topical areas and examine how well a State plans, collects, manages, and integrates information from several State traffic records systems.<sup>4</sup> Responses are evaluated by subject matter experts, and a final report is provided to the State with recommendations for improvement.

*Description of the Need for the Information and Proposed Use of the Information:* As noted above, the statute provides that the HSP is the application for grants each fiscal year. The information is necessary to determine whether a State satisfies the Federal criteria for grant awards. The annual report tracks progress in achieving the aims of the grant program. The information is necessary to verify performance under the grants and to provide a basis for improvement. As specified in statute, States may be required to receive an assessment of certain covered programs. The information provided by a State allows subject matter experts to provide recommendations for the purpose of improving the covered areas.

*Description of the Likely Respondents:* 57 Respondents (fifty States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of the Indian Country).

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information:*<sup>5</sup> The estimated burden hours for the grant application and annual report part of the collection of information are based on all eligible respondents each year for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of

the Northern Mariana Islands, and the Bureau of Indian Affairs);

- Section 405 Grants (except Impaired Driving Countermeasures, Motorcyclist Safety and Nonmotorized Grants) and Section 1906 Grant: 56 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and

- Section 405, Impaired Driving Countermeasures, Motorcyclist Safety and Nonmotorized Grants: 52 (fifty States, the District of Columbia, and Puerto Rico).

The estimated burden hours for the assessment part of the collection of information are based on the average number of State assessments that are carried out each year in each of the covered grant areas:<sup>6</sup>

- Section 405, Occupant protection grants: 9 assessments;
- Section 405, Traffic safety information system improvement grants: 11 assessments; and
- Section 405, Impaired driving countermeasure grants: 4 assessments.

Under the grant application and annual report requirements, we estimate that it will take each respondent approximately 240 hours to collect, review and submit the required information to NHTSA for the Section 402 program. We further estimate that it will take each respondent approximately 180 hours to collect, review and submit the required information to NHTSA for the Section 405 program. For traffic safety information system improvement grants, we estimate that it takes 165 hours to respond to questions under the assessment. For occupant protection and impaired driving countermeasures grants, we estimate that it takes 80 hours to provide the required information and respond to questions under an assessment. Based on the above information, the estimated annual burden hours for all respondents are 26,615 hours.

Assuming the average salary of individuals responsible for submitting the information is \$50.00 per hour, the estimated cost for each respondent is \$23,350 and the estimated total cost for all respondents is \$1,330,750.<sup>7</sup> These

<sup>6</sup> Assessment average is based on the total number of assessments conducted each year and divided by the number of years since the inception of assessment requirements for certain grants under MAP-21, Public Law 112-141.

<sup>7</sup> Per hour costs are estimated based on the costs paid to fund positions within State highway safety offices and represent an average across several positions that a State might use to collect and submit grant application information.

<sup>4</sup> The *Traffic Records Program Assessment Advisory* is available online at <https://www.nhtsa.gov/research-data/traffic-records>.

<sup>5</sup> As noted later, the total number of respondents is based on every eligible respondent submitting the required information for every available grant.



estimates are based on every eligible respondent submitting the required information for every available grant. However, not all States apply for and receive a grant each year under each of these programs. In addition, under Section 405 grants, some requirements permit States to submit a single application covering multiple years allowing States to simply recertify in subsequent years. Considering the agency's steps to streamline the current submission process, including increased use of prepopulated information fields in GMSS and greater reliance on electronic submission in general, these estimates represent the highest possible burden hours and costs possible for States submitting the required information.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by January 26, 2018.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 5 CFR part 1320; and 49 CFR 1.95.

Issued in Washington, DC on November 20, 2017.

**Mary D. Gunnels,**

*Associate Administrator for Regional Operations and Program Delivery.*

[FR Doc. 2017-25563 Filed 11-24-17; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

[Docket Number: DOT-OST-2017-0043]

### Agency Information Collection Activity; Notice of Reinstatement To Collect Information: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf

**AGENCY:** Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research Technology (OST-R), U.S. Department of Transportation.

**ACTION:** Notice; Reinstatement to Collect Data.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget (OMB) to reinstate previously approved OMB Number 2139-0046 for the following information collection: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf (OCS). BTS entered into a memorandum of understanding (MOU)

with the Bureau of Safety and Environmental Enforcement (BSEE) to include an industry-wide repository of equipment failure data, analyze and aggregate information collected under this program, and publish reports that will provide BSEE, the industry, and all OCS stakeholders with essential information about failure types and modes of critical safety barriers for offshore operations related to well control. The data collection effort that is the subject of this notice, addressed the collection of failure data as referenced in recently issued BSEE regulations on (81 FR 25888), April 29, 2016 and (81 FR 61834), September 7, 2016. BTS received permission to collect the data under an emergency OMB control number on September 29, 2016. Through this notice, BTS is requesting permission to reinstate this previously approved OMB control number. This information collection is necessary to aid BSEE, the oil and gas industry, and other stakeholders in identifying barrier failure trends and causes of critical safety barrier failure events.

**DATES:** Comments must be received by December 27, 2017.

**ADDRESSES:** BTS seeks public comments on its proposed continuation of information collection. Comments should address whether the information will have practical utility; the accuracy of the estimated burden hours of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: BTS Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Demetra V. Collia, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology (OST-R), U.S. Department of Transportation, Office of Statistical and Economic Analysis (OSEA), RTS-31, E36-302, 1200 New Jersey Avenue SE., Washington, DC 20590-0001; Phone No. (202) 366-1610; Fax No. (202) 366-3383; email: [demetra.collia@dot.gov](mailto:demetra.collia@dot.gov). Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

**Data Confidentiality Provisions:** This data collection is protected under the BTS confidentiality statute (49 U.S.C. 6307(b)) and the Confidential Information Protection and Statistical

Efficiency Act (CIPSEA) of 2002 (Public Law 107-347, Title V). In accordance with these confidentiality statutes, only statistical and non-identifying data will be made publicly available through reports. Further, BTS will not release to BSEE or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in SafeOCS reports.

#### SUPPLEMENTARY INFORMATION:

##### I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain OMB approval to continue an information collection activity. BTS is seeking OMB approval for the following BTS information collection activity:

**Title:** Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf.

**OMB Control Number:** 2139-0046.

**Type of Review:** Approval of data collection.

**Respondents:** Oil and Gas Operators on the Outer Continental Shelf.

**Number of Respondents:** As a request to be authorized repository for previously collected information, BTS has identified BSEE as the sole respondent reporting to BTS at the annual frequency of one.

**Estimated Time per Response:** 60 minutes.

**Frequency:** Once.

**Total Annual Burden:** 1 hour.

BTS has agreed through an MOU with BSEE to undertake the information collection identified in the previously approved BSEE notice for OMB Control Number(s) 1014-0028, expiration 4/30/2019 and the BSEE notice with OMB Control Number 1014-0003, expiration 8/31/2019, to ensure the confidentiality of submissions under CIPSEA. The information collection is limited to the establishment of BTS as an authorized repository. This information collection request does not create any additional burden for respondents.

##### II. Public Participation and Request for Public Comments

On March 30, 2017, BTS published a notice (82 FR 15787) encouraging interested parties to submit comments to docket number DOT-OST-2017-0043 and allowing for a 60-day comment period. The comment period closed on May 30, 2017. To view comments, go to <http://www.regulations.gov> and insert the docket number, "DOT-OST-2017-0043" in the "Search" box and click "Search." Next, click "Open Docket

Folder” button and choose document listed to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the U.S. DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

#### Privacy Act

All comments the BTS received were posted without change to <http://www.regulations.gov>. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit <https://www.gpo.gov/fdsys/pkg/FR-2017-03-30/pdf/2017-06272.pdf>.

### III. Discussion of Public Comments and BTS Responses

BTS announced on March 30, 2017 in a **Federal Register** Notice (82 FR 15788) its intention to request that OMB approve the following continuation of information collection: Barrier Failure Reporting in Oil and Gas Operations on the Outer Continental Shelf. BTS received no comments during the 60-day public comment period. The March 30th notice stated that the BTS was seeking to renew the previously approved collection 2139-0046. This 30-day notice clarifies that BTS is seeking reinstatement of the expired collection and is requesting OMB authorize the collection for three years.

Issued on: November 21, 2017.

**Patricia Hu,**

Director, Bureau of Transportation Statistics,  
Office of the Assistant Secretary for Research  
and Technology

[FR Doc. 2017-25565 Filed 11-24-17; 8:45 am]

BILLING CODE 4910-P

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Bureau of the Fiscal Service Information Collection Requests

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before December 27, 2017 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Jennifer Leonard by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0489, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

##### Bureau of the Fiscal Service (FS)

*Title:* Investigative Forms.

*OMB Control Number:* 1530-0060.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Information requested is in support of background investigations conducted by the Bureau of the Fiscal Service.

*Forms:* FS Form 5518, FS Form 5521, FS Form 5520, FS Form 5519

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden Hours:* 125.

*Title:* Checklists of Filings for Certified Surety and/or Certified Reinsuring Companies and for Admitted Reinsurer Companies.

*OMB Control Number:* 1530-0061.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* This information is collected from insurance companies to provide Treasury a basis to determine acceptability of companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or as an Admitted Reinsurer (not on excess risks to U.S.).

*Forms:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 150.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: November 21, 2017.

**Spencer W. Clark,**

Treasury PRA Clearance Officer.

[FR Doc. 2017-25540 Filed 11-24-17; 8:45 am]

BILLING CODE 4810-AS-P

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bond Guarantee Program

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before December 27, 2017 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Jennifer Leonard by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0489, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

##### Community Development Financial Institutions Fund (CDFI)

*Title:* Bond Guarantee Program.

*OMB Control Number:* 1559-0044.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee

Program (BG Program) is to support CDFI lending by providing Guarantees for Bonds issued by Qualified Issuers as part of a Bond Issue for Eligible Community or Economic Development Purposes.

*Forms:* Guarantee Application, Guarantee Application—Appendix A–2A Certification Regarding Material Changes to the Qualified Issuer Application, Guarantee Application—Appendix A–2C Assurances and Certifications for Qualified Issuer and Guarantee Applications, Guarantee

Application—Appendix B–ID-Charts and Templates, Qualified Issuer Application, Qualified Issuer Application—Appendix QI–2–E Notice of Designating Qualified Issuer, Secondary Loan Requirements Certification with Itemization of Collateral, Itemization of Collateral Form, Financial Condition Monitoring Report, Pledged Loan Monitoring Report, Certification of Secondary Loan Requirements for Committed Loans, Secondary Loan Commitment Form,

Annual Assessment Report, Program Activities Monitoring (PAM) Report.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 9,406.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: November 21, 2017.

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2017–25541 Filed 11–24–17; 8:45 am]

**BILLING CODE 4810–70–P**



# FEDERAL REGISTER

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Part II

## Department of Commerce

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National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Southwest Pacific Ocean, 2017/2018; Notice

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XF456

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Southwest Pacific Ocean, 2017/2018**

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Lamont-Doherty Earth Observatory of Columbia University (L–DEO) to incidentally harass, by Level A and Level B harassment only, marine mammals during marine geophysical survey activities in the southwest Pacific Ocean.

**DATES:** This Authorization is valid from October 27, 2017 through October 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jordan Carduner, 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: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:****Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact

on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**National Environmental Policy Act**

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from L–DEO’s planned surveys. A Finding of No Significant Impact (FONSI) was signed on October 27, 2017. A copy of the EA and FONSI is available upon request (see **ADDRESSES**).

**Summary of Request**

On May 17, 2017, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to conducting a marine geophysical survey in the southwest Pacific Ocean. On September 13, 2017, we deemed L–DEO’s application for authorization to be adequate and complete. L–DEO’s request is for take of 38 species of marine mammals by Level B harassment and Level A harassment. Neither L–DEO nor NMFS expects mortality to result from this activity, and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year, hence, we do not expect subsequent MMPA incidental harassment authorizations would be issued for this particular activity.

**Description of Activity**

Researchers from California State Polytechnic University, California Institute of Technology, Pennsylvania

State University, University Southern California, University of Southern California, University of Hawaii at Manoa, University of Texas, and University of Wisconsin Madison, with funding from the U.S. National Science Foundation, propose to conduct three high-energy seismic surveys from the research vessel (R/V) *Marcus G. Langseth (Langseth)* in the waters of New Zealand in the southwest Pacific Ocean in 2017/2018. The NSF-owned *Langseth* is operated by L–DEO. One proposed survey would occur east of North Island and would use an 18-airgun towed array with a total discharge volume of ~3,300 cubic inches (in<sup>3</sup>). Two other proposed seismic surveys (one off the east coast of North Island and one south of South Island) would use a 36-airgun towed array with a discharge volume of ~6,600 in<sup>3</sup>. The surveys would take place in water depths from ~50 to >5,000 m.

The North Island two-dimensional (2-D) survey would consist of approximately 35 days of seismic operations plus approximately 2 days of transit and towed equipment deployment/retrieval. The *Langseth* would depart Auckland on approximately October 26, 2017 and arrive in Wellington on December 1, 2017. The North Island three-dimensional (3-D) survey is proposed for approximately January 5, 2018–February 8, 2018 and would consist of approximately 33 days of seismic operations plus approximately 2 days of transit and towed equipment deployment/retrieval. The *Langseth* would leave and return to port in Napier. The South Island 2-D survey is proposed for approximately February 15, 2018–March 15, 2018 and would consist of approximately 22 days of seismic operations, approximately 3 days of transit, and approximately 7 days of ocean bottom seismometer (OBS) deployment/retrieval.

The proposed surveys would occur within the Exclusive Economic Zone (EEZ) and territorial sea of New Zealand. The proposed North Island 2-D survey would occur within ~37–43° S. between 180° E. and the east coast of North Island along the Hikurangi margin. The proposed North Island 3-D survey would occur over a 15 x 60 kilometer (km) area offshore at the Hikurangi trench and forearc off North Island within ~38–39.5° S., ~178–179.5° E. The proposed South Island 2-D survey would occur along the Puysegur margin off South Island within ~163–168° E. between 50° S. and the south coast of South Island. Please see Figure 1 and Figure 2 in L–DEO’s IHA application for maps depicting the

specified geographic region of the proposed surveys.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (82

FR 45116; September 27, 2017). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal**

**Register** notice for the description of the specific activity. Specifications of the airgun arrays, trackline distances, and water depths of each of the three proposed surveys are shown in Table 1.

**TABLE 1—SPECIFICATIONS OF AIRGUN ARRAYS, TRACKLINE DISTANCES, AND WATER DEPTHS ASSOCIATED WITH THREE PLANNED R/V LANGSETH SURVEYS OFF NEW ZEALAND**

	North Island 2-D survey	North Island 3-D survey	South Island 2-D survey
Airgun array configuration and total volume.	36 airguns, four strings, total volume of ~6,600 in <sup>3</sup> .	two separate 18-airgun arrays that would fire alternately; each array would have a total discharge volume of ~3,300 in <sup>3</sup> .	36 airguns, four strings, total volume of ~6,600 in <sup>3</sup> .
Tow depth of arrays .....	9 m .....	9 m .....	9 m.
Shot point intervals .....	37.5 m .....	37.5 m * .....	50 m.
Source velocity (tow speed) .....	4.3 knots .....	4.5 knots .....	4.5 knots.
Water depths .....	8%, 23%, and 69% of line km would take place in shallow (<100 m), intermediate (100–1,000 m), and deep water (>1,000 m), respectively.	0%, 42%, and 58% of line km would take place in shallow, intermediate, and deep water, respectively.	1%, 17%, and 82% of line km would take place in shallow, intermediate, and deep water, respectively.
Approximate trackline distance .....	5,398 km .....	3,025 km .....	4,876 km.
Percentage of survey tracklines proposed in New Zealand Territorial Waters.	Approximately 9 percent .....	Approximately 1 percent .....	Approximately 6 percent.

\* The two arrays fire alternately with an approximate distance of 37.5 m traveled between the firing of one array, then the other.

**Comments and Responses**

NMFS published a notice of proposed IHA in the **Federal Register** on September 27, 2017 (82 FR 45116). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the Marine Seismic Research Oversight Committee (MSROC) and from members of the general public. NMFS has posted the comments online at: <http://www.nmfs.noaa.gov/pr/permits/incidental>. The following is a summary of the public comments and NMFS' responses.

*Comment 1:* The Commission expressed concerns regarding L-DEO's method to estimate the extent of the Level A and B harassment zones and the numbers of marine mammal takes. The Commission stated that the model is not the best available science because it assumes spherical spreading, a constant sound speed, and no bottom interactions for surveys in deep water. In light of their concerns, the Commission recommended that NMFS require L-DEO to re-estimate the Level A and Level B harassment zones and associated takes of marine mammals using both operational (including number/type/spacing of airguns, tow depth, source level/operating pressure, operational volume) and site-specific environmental (including sound speed profiles, bathymetry, and sediment characteristics at a minimum) parameters.

*NMFS Response:* NMFS understands the concerns expressed by the Commission about L-DEO's current modeling approach for estimating Level A and Level B harassment zones. L-DEO has conveyed to NMFS that additional modeling efforts to refine the process and conduct comparative analysis may be possible with the availability of research funds and other resources. Obtaining research funds is typically accomplished through a competitive process, including those submitted to U.S. Federal agencies. The use of models for calculating buffer and exclusion zone radii and for developing take estimates is not a requirement of the MMPA incidental take authorization process. Furthermore, NMFS does not provide specific guidance on model parameters nor prescribe a specific model for applicants as part of the MMPA incidental take authorization process at this time, although we do review methods to ensure their adequacy for prediction of take.

L-DEO's application describes their approach to modeling Level A and Level B harassment zones. In summary, L-DEO acquired field measurements for several array configurations at shallow, intermediate, and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico in 2007 and 2008; these were presented in Tolstoy *et al.* (2009). Based on the empirical data from those studies, L-DEO developed a sound propagation modeling approach that predicts received sound levels as a

function of distance from a particular airgun array configuration in deep water (Diebold *et al.*, 2010; NSF-USGS 2011). For the planned surveys off the coast of New Zealand, L-DEO modeled Level A and Level B harassment zones using the sound propagation modeling approach described in Diebold *et al.* (2010), based on the empirically-derived measurements from the Gulf of Mexico calibration survey. For deep water (>1000 meters (m)), L-DEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 m (Figure 2 and 3 in Diebold *et al.*, 2010); the radii for intermediate water depths (100–1,000 m) were derived from the deep-water radii by applying a correction factor (multiplication) of 1.5 (Fig. 16 in Diebold *et al.*, 2010); the radii for shallow-water depths (<100 m) were derived by applying a scaling factor to the empirically derived measurements from the Gulf of Mexico calibration survey (Tolstoy *et al.*, 2009) to account for the differences in tow depth between the Gulf of Mexico calibration survey (6 m) and the planned New Zealand surveys (9 and 12 m).

In 2015, L-DEO explored the question of whether the Gulf of Mexico calibration data adequately informs the model to predict isopleths in other areas by conducting a retrospective sound power analysis of one of the lines acquired during a L-DEO seismic survey offshore New Jersey in 2014 (Crone, 2015). NMFS presented a comparison of the predicted radii (*i.e.*,

modeled isopleths to distances corresponding to Level A and Level B harassment thresholds) with radii based on in situ measurements in a previous notice of issued Authorization for Lamont-Doherty (see 80 FR 27635; May 14, 2015, Table 1).

Briefly, Crone's (2015) analysis, specific to the survey site offshore New Jersey, confirmed that in-situ, site specific measurements and estimates of 160 decibels (dB) root mean square (rms) and 180 dB rms isopleths collected by the *Langseth's* hydrophone streamer in shallow water were smaller than the modeled (*i.e.*, predicted) zones for two seismic surveys conducted offshore New Jersey in shallow water in 2014 and 2015. In that particular case, Crone's (2015) results showed that L-DEO's modeled 180 dB rms and 160 dB rms zones were approximately 28 percent and 33 percent larger, respectively, than the in-situ, site-specific measurements, thus confirming that L-DEO's model was conservative in that case. The following is a summary of two additional analyses of in-situ data that support L-DEO's use of the modeled Level A and Level B harassment zones in this particular case.

In 2010, L-DEO assessed the accuracy of their modeling approach by comparing the sound levels of the field measurements acquired in the Gulf of Mexico study to their model predictions (Diebold *et al.*, 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted mitigation radii curve for deep water (greater than 1,000 m; 3280.8 feet (ft)) (Diebold *et al.*, 2010).

In 2012, L-DEO used a similar process to model distances to isopleths corresponding to the isopleths corresponding to Level A and Level B harassment thresholds for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington State. L-DEO conducted the shallow-water survey using the same airgun configuration planned for the surveys considered in this IHA (*i.e.*, 6,600 cubic inches (in<sup>3</sup>) and recorded the received sound levels on both the shelf and slope using the *Langseth's* 8 kilometer (km) hydrophone streamer. Crone *et al.* (2014) analyzed those received sound levels from the 2012 survey and confirmed that in-situ, site specific measurements and estimates of the 160 dB rms and 180 dB rms isopleths collected by the *Langseth's* hydrophone streamer in shallow water were two to three times smaller than L-DEO's modeling approach had predicted. While the results confirmed bathymetry's role in sound propagation, Crone *et al.* (2014) were also able to

confirm that the empirical measurements from the Gulf of Mexico calibration survey (the same measurements used to inform L-DEO's modeling approach for the planned surveys in the southwest Pacific Ocean) overestimated the size of the predicted isopleths for the shallow-water 2012 survey off Washington State and were thus precautionary, in that particular case.

NMFS continues to work with L-DEO to address the issue of incorporating site-specific information for future authorizations for seismic surveys. However, L-DEO's current modeling approach (supported by the three studies discussed previously) represents the best available information for NMFS to reach determinations for this IHA. As described earlier, the comparisons of L-DEO's model results and the field data collected in the Gulf of Mexico, offshore Washington State, and offshore New Jersey illustrate a degree of conservativeness built into L-DEO's model for deep water, which NMFS expects to offset some of the limitations of the model to capture the variability resulting from site-specific factors. Based upon the best available information (*i.e.*, the three data points, two of which are peer-reviewed, discussed in this response), NMFS finds that the Level A and Level B harassment zone calculations are appropriate for use in this particular IHA. Additionally, results of acoustic modeling represent just one component of the analysis during the MMPA authorization process, as NMFS also takes into consideration other factors associated with the activity (*e.g.*, geographic location, duration of activities, context, sound source intensity, etc.).

*Comment 2:* The Commission recommended that NMFS use a different data source to estimate densities of New Zealand fur seals and southern elephant seals than was used in the proposed IHA. Specifically, the Commission recommended that NMFS rely on the data presented in the U.S. Navy Marine Species Density Database (NMSDD) to estimate take of these pinniped species. The Commission also recommended that NMFS convene an internal working group to determine what data sources are considered best available for the various species and in the various areas and provide that information to applicants accordingly.

*NMFS Response:* Density data presented in Bonnell *et al.* (1992) was used in this particular IHA because it was based on systematic aerial at-sea surveys (off Oregon and Washington), whereas the data presented in NMSDD was derived from surveys of hauled out

pinnipeds. While the NMSDD data is more recent than the data presented in Bonnell *et al.* (1992), in this case we determined that densities presented in Bonnell *et al.* (1992), which were derived from at-sea surveys, would be more representative of densities for similar taxonomic species in a different area (in this case, New Zealand). It is important to note that the NMSDD data are specific to the west coast of the U.S. and were based on population sizes for the species in the particular geographic ranges for the particular geographic areas of concern for the U.S. Navy, and are therefore useful in estimating densities for those same species in those same particular geographic areas. However, in this case the densities reported for pinnipeds off the U.S. west coast were used to estimate densities of surrogate species in a different geographic area (New Zealand). Thus our selection of the data from Bonnell *et al.* (1992) to extrapolate pinniped densities in New Zealand for this IHA was based on a preference to use data that was based on at-sea surveys to estimate at-sea density. While we acknowledge the usefulness of the NMSDD data for calculating marine mammal densities for ITAs for activities that occur on the U.S. west coast, that does not preclude us from relying on other data sources when activities are planned to occur outside the U.S. In summary, while NMFS has used NMSDD density data to estimate take of pinnipeds in previous ITAs for activities that occurred off the west coast of the U.S., NMFS determined that, for this particular IHA, Bonnell *et al.* (1992) represented the best available information for the marine mammals in the survey area.

Regarding the Commission's recommendation that NMFS convene an internal working group to determine what data sources are considered best available for the various species and in the various areas, NMFS may consider future action to address these issues, but currently intends to address these questions through ongoing interactions with the U.S. Navy, academic institutions, and other organizations.

*Comment 3:* The Commission recommended that NMFS adjust density estimates using some measure of uncertainty (*i.e.*, coefficient of variation, standard deviation, standard error) rather than the proposed 25 percent contingency, and recommended that NMFS convene a working group to determine how best to incorporate uncertainty in density data that are extrapolated.

*NMFS Response:* The Commission has recommended previously that NMFS

adjust density estimates using some measure of uncertainty when available density data originate from different geographic areas, temporal scales, and species, especially for actions which will occur outside the U.S. EEZ where site- and species-specific density estimates tend to be scant, such as L-DEO's planned survey. We have attempted to do so in this IHA, and feel the 25 percent correction factor is an appropriate method in this case to account for uncertainties in the density data that was available for use in the take estimates. NMFS is open to consideration of other correction factors for use in future IHAs and looks forward to further discussion with the Commission on how best to incorporate uncertainty in density estimates in instances where density data is limited.

Regarding the recommendation that NMFS convene a working group to determine how best to incorporate uncertainty in density data that are extrapolated, NMFS may consider future action to address these issues, but currently intends to address these questions through ongoing interactions with the U.S. Navy, academic institutions, and other organizations.

*Comment 4:* The Commission expressed concern regarding methods used to estimate the numbers of takes, including the use of rounding in calculations and recommended that NMFS share the rounding criteria with the Commission.

*NMFS Response:* NMFS appreciates the Commission's ongoing concern in this matter. Calculating predicted takes is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. We believe, however, that the methodology used for take calculation in this IHA, as described in detail in the **Federal Register** notice of the proposed IHA (82 FR 45116; September 27, 2017), remains appropriate. NMFS continues to refine the rounding criteria and will share the criteria with the Commission upon its finalization.

*Comment 5:* The Commission recommended that NMFS authorize Level A take based on group size of the species when Level A take is anticipated and when the estimated Level A take of a species was less than the group size for the species.

*NMFS Response:* NMFS considered this recommendation but ultimately concluded that, given the modeled Level A harassment zones in concert with the mitigation measures required in the IHA, it was not realistic to assume a single take by Level A harassment of

an individual animal would translate to an entire group of that species being taken by Level A harassment, in all instances. The assumption that if a single individual is taken then an entire group would be taken only applies in the case of instantaneous exposure, as it is extremely unlikely that an entire group of animals would remain within an area long enough to be taken by an accumulation of energy ( $SEL_{cum}$ ). Therefore, in analyzing this question, we only considered the potential for Level A take of an entire group of the species in the context of peak sound pressure level (SPL). The modeled Level A zones (peak SPL) for marine mammal functional hearing groups are relatively small, especially in the cases of low-frequency cetaceans, mid-frequency cetaceans, phocid pinnipeds and otariid pinnipeds, for which the modeled Level A zones (peak SPL) are all estimated to be less than 50 m (Tables 6, 7 and 8). Coupled with the fact that shutdown of the airguns is required for marine mammals within 100 m of the array (with the exception of short-beaked common dolphins, dusky dolphins and southern right whale dolphins that approach the vessel), it is very unlikely that an entire group of any species of marine mammals in these functional hearing groups would be exposed to the airgun array at levels that would constitute Level A harassment. For instance, in the case of short-finned pilot whales, one take by Level A harassment is estimated during the North Island 2-D survey (Table 10). Though we are not aware of information on the typical group size for short-finned pilot whales off New Zealand, Ross (2006) reported that short-finned pilot whales off Australia tend to occur in groups of 10–30 individuals. The Level A harassment zone (SPL) for short-finned pilot whales (considered to be in the mid-frequency functional hearing group) for the North Island 2-D survey is estimated to be less than 14 m (Table 6). We believe the possibility of a group of 10–30 short-finned pilot whales approaching within 14 m of the airgun array and being taken by Level A harassment, especially considering the mitigation requirement that the array be shut down entirely if a pilot whale approaches within 100 m of the array, is so low as to be discountable.

Even in the case of short-beaked common dolphins, dusky dolphins and southern right whale dolphins that approach the vessel, for which the power down requirement does not apply, we believe the likelihood that a group of bow-riding dolphins would occur within 14 m of the array to be so

low as to be discountable. For instance, though common dolphin group size varies depending on season, depth, sea surface temperature, Stockin (2008) reported the most frequently observed group size in the Hauraki Gulf to be 21–30 animals. We believe the possibility of a group of 21–30 dolphins approaching within 14 m of the airgun array and being taken by Level A harassment is so low as to be discountable. Therefore, for the species categorized as low-frequency cetaceans, mid-frequency cetaceans, phocid pinnipeds and otariid pinnipeds, we do not authorize Level A take by group size, when at least one take is estimated to occur for the species.

The Level A harassment zones (peak SPL) for high-frequency cetaceans are estimated at 229.2 m, 119.0 m, and 229.2 m, for the North Island 2-D, North Island 3-D, and South Island 2-D surveys, respectively. We analyzed the potential for a group of any of the species in the high-frequency functional hearing group (that occur in the survey areas) occurring between 229.2 m (largest distance to the isopleth corresponding to the Level A harassment threshold) and 100 m (the distance to the 100 m exclusion zone (EZ) for the smallest element in the array, for all species in the high-frequency functional hearing group) of the array. The species in this group for which Level A take is authorized in this IHA include the hourglass dolphin, spectacled porpoise and pygmy sperm whale. We are not aware of information on the group sizes of these species in the waters off New Zealand. However, based on the best available information, estimated group sizes are lower than the number of takes authorized, when at least 1 Level A take is authorized, for these species: Hourglass dolphin group size was reported as averaging 2–6 individuals in Antarctic waters (Santora, 2012) whereas 15, 10, and 12 takes by Level A harassment are authorized (for North Island 2-D, North Island 3-D, and South Island 2-D survey, respectively); spectacled porpoise group size was reported as 2 individuals in Antarctic waters (Sekiguchi *et al.*, 2006), whereas 6 takes by Level A harassment are authorized for the South Island 2-D survey (with 0 Level A takes predicted for the North Island 2-D and North Island 3-D surveys); *Kogia* spp. mean group size was reported as 1.9 individuals in the California current ecosystem (Barlow, 2010) whereas 6, 4, and 5 takes by Level A harassment are authorized (for North Island 2-D, North Island 3-D, and South Island 2-D survey, respectively). Because the number of



authorized Level A takes are higher than the respective group sizes for these species, we do not authorize Level A take by group size, when at least one take is estimated to occur for the species, for any marine mammal species.

*Comment 6:* The Commission recommended that NMFS include a take table showing the total numbers of takes for the entire activity area (territorial seas, exclusive economic zones, and high seas).

*NMFS Response:* NMFS does not authorize takes in the territorial sea. However, we have included a table showing the take estimates in the New Zealand territorial sea (see Table 14).

*Comment 7:* The Commission recommended that NMFS include pygmy and ginkgo-toothed beaked whales and dwarf sperm whales in the IHA, based on range estimates and stranding records in New Zealand for these species.

*NMFS Response:* NMFS has reviewed the available literature available on the strandings of these three species. While stranding records exist for these species in various locations on the coast of New Zealand, these strandings appear to have been isolated events in all cases and do not suggest that the density of these species in the survey area is such that take of these species is likely to occur. Therefore, we do not authorize take of ginkgo-toothed beaked whales, pygmy beaked whales, and dwarf sperm whales in this IHA.

*Comment 8:* The Commission recommended that NMFS prohibit L-DEO from using power downs during its survey.

*NMFS Response:* NMFS agrees with the Commission that limiting the use of power downs can be beneficial in reducing the overall sound input in the marine environment from geophysical surveys; as such, NMFS is requiring that power downs in this IHA occur for no more than a maximum of 30 minutes at any time. NMFS is still in the process of determining best practice, via solicitation of public comment, for the use of power downs as a mitigation measure in ITAs for geophysical surveys. We will take into consideration the Commission's recommendation that power downs be eliminated as we work toward a determination on best practices for the use of power downs in IHAs for marine geophysical surveys. Ultimately our determination will be based on the best available science and will be communicated clearly to ITA applicants.

*Comment 9:* The Commission recommended that NMFS condition the

IHA to require LDEO to abide by the regulatory requirements of New Zealand's Exclusive Economic Zone and Continental Shelf Act and, through it, the mandatory provisions of the 2013 Code of Conduct for Minimizing Acoustic Disturbance to Marine Mammals from Seismic Survey Operations (Code).

*NMFS Response:* NMFS does not have the statutory authority to require L-DEO to abide by the regulatory requirements of New Zealand's Exclusive Economic Zone and Continental Shelf Act and, through it, the mandatory provisions of the Code. Under the MMPA, L-DEO must comply with the requirements of the IHA. However, we also encourage L-DEO to comply with the provisions of the Code to the extent possible.

*Comment 10:* The Commission recommended that NMFS include a mitigation measure requiring shutdown of the airgun array upon observation of a large whale with calf or an aggregation of large whales at any distance, in an effort to minimize impacts on mysticetes and sperm whales that are engaged in biologically-important behaviors (e.g., nursing, breeding, feeding).

*NMFS Response:* NMFS has included mitigation measures in the final IHA requiring shutdown of the airgun array upon observation of a large whale with calf and upon observation of an aggregation of large whales at any distance, as recommended by the Commission. See the section on Mitigation, below, for more details.

*Comment 11:* The Commission recommended that NMFS incorporate mitigation measures that would require both visual observations and passive acoustic methods to implement shutdown procedures when any sperm whale, beaked whale, or *Kogia* spp. are detected, which would bolster mitigation efforts as a whole, affording NMFS the ability to further reduce the impacts on those deep-diving species. The Commission also recommended a consistent approach for requiring all geophysical and seismic survey operators to abide by the same general mitigation measures.

*NMFS Response:* NMFS has included a mitigation measure in the final IHA requiring shutdown of the airgun array upon acoustic detection of a beaked whale, sperm whale, or *Kogia* spp., as recommended by the Commission, with an exception for sperm whales in instances where the acoustic detection can be definitively localized and the sperm whale is confirmed to be located outside the 500 m exclusion zone. See the Response to Comment 13 and the section on Mitigation, below, for further

details, including the reasoning behind the shutdown requirement upon acoustic detection and the sperm whale exception.

NMFS considered requirement of shutdown upon visual detection of sperm whales at any distance. We have included a mitigation measure that would require shutdown of the array on acoustic detection of sperm whales at any distance (except in instances where the sperm whale can be definitively localized as being located outside the 500 m EZ). The reasoning behind the shutdown requirement upon acoustic detection is provided in more detail below (see section on Mitigation). Based on the best available information, we believe that acoustic detections of sperm whales would most likely be representative of the foraging behavior we intend to minimize disruption of, while visual observations of sperm whales would represent resting between bouts of such behavior. Occurrence of resting sperm whales at distances beyond the 500 m exclusion zone may not indicate a need to implement shutdown. Therefore, this measure has not been added to the final IHA. This is discussed in greater detail in the Mitigation section, below.

NMFS agrees with the Commission that consistency in mitigation measures across incidental take authorizations (ITAs) for similar activities is a worthwhile goal, to the extent practicable. However, NMFS also must determine the most appropriate mitigation measures for a given ITA, taking into account factors unique to that ITA, such as the type, extent, location, and timing of activities, and therefore, complete consistency in mitigation measures across ITAs for similar activities will not always be possible. NMFS is still in the process of determining best practice, via solicitation of public comment, for the use of a suite of mitigation measures in ITAs for marine geophysical surveys. We will take into consideration the Commission's recommendations with regard to mitigation measures as we work toward determinations on best practices for mitigation measures in IHAs for geophysical surveys. Ultimately our determination will be based on the best available science and will be communicated clearly to ITA applicants.

*Comment 12:* The Commission expressed concern that reporting of the manner of taking and the numbers of animals incidentally taken should account for all animals in the various survey areas, including those animals directly on the trackline that are not detected, and how well animals are

detected based on the distance from the observer (accounted for by  $g(0)$  and  $f(0)$  values). The Commission has recommended a method for estimating the number of cetaceans in the vicinity of geophysical surveys based on the number of groups detected and recommended that NMFS require L-DEO to use this method for estimating  $g(0)$  and  $f(0)$  values to better estimate the numbers of marine mammals taken by Level A and Level B harassment.

*NMFS Response:* NMFS agrees that reporting of the manner of taking and the numbers of animals incidentally taken should account for all animals taken, including those animals directly on the trackline that are not detected and how well animals are detected based on the distance from the observer, to the extent practicable. NMFS appreciates the Commission's recommendations but we believe that the Commission's described method needs further consideration in relation to the observations conducted during marine geophysical surveys. Therefore, at this time we do not prescribe a particular method for accomplishing this task. We look forward to engaging further both L-DEO, the Commission and other applicants to reach a determination on the most suitable method to for estimating  $g(0)$  and  $f(0)$  values.

*Comment 13:* A member of the general public expressed concern regarding the effective dates of the IHA and that there had not been adequate consultation within New Zealand, including that the local indigenous populations were not consulted.

*NMFS Response:* NMFS has followed and met its statutory obligations with respect to notifying the public of, and requesting comments on, the proposed IHA, and has considered and responded to all public comments received. With respect to concerns regarding communication within New Zealand, including with indigenous groups, NMFS does not have the authority to require communication between L-DEO and the New Zealand government or interested parties within New Zealand. In addition, the MMPA provides authority only to authorize the take of marine mammals that may occur incidental to the activity; NMFS does not permit the activity itself. However, the National Science Foundation, as the funder of the survey, has been in communication with the New Zealand Department of Conservation (NZDOC) regarding the survey, and recommendations from the NZDOC have been incorporated in the IHA. For instance, the power down waiver for bottlenose dolphins has been removed

from the IHA based on input received from the NZDOC (see the section on Revisions to the IHA That Have Occurred Since the Proposed IHA, below, for details). The comment also stated that lack of communication with indigenous groups represents a breach of the Treaty of Waitangi; however, the United States is not a Party to the Treaty of Waitangi.

*Comment 14:* A member of the general public expressed concern regarding potential impacts to marine mammals, including impacts to mother-calf pairs, South Island Hector's dolphins, southern right whales, blue whales, killer whales, sperm whales and beaked whales. The commenter also expressed concern that tourism companies could be hurt financially by the planned surveys

*NMFS Response:* The commenter expressed concern that the timing of the planned surveys overlaps with calving season for delphinids and that noise from the planned surveys could interfere with mother-calf communication. The commenter did not provide any detailed or substantive information or references to support this statement or change our analyses. We recognize that restricted communication as a result of increased noise from seismic surveys may be of concern, which is why we have incorporated mitigation measures to minimize the potential for this to occur. For instance, the IHA requires that the airgun array be shut down upon observation of a large whale with calf at any distance; additionally, the airgun array would be powered down to a single 40 in<sup>3</sup> airgun if any delphinids (other than those that approach the vessel (*i.e.*, bow ride)) are detected within 500 m of the array. We have determined these measures ensure the least practicable impact on the species potentially affected. The commenter expressed concern regarding potential impacts to blue whales, killer whales, sperm whales and other deep-diving whales. However, the comments specific to blue whales, killer whales, sperm whales and other deep-diving whales did not include any supporting information nor did they recommend any specific action. NMFS believes the mitigation and monitoring measures incorporated in the IHA, including measures specific to sperm whales and other deep diving cetaceans, ensure the least practicable impact on the species potentially affected (see the Mitigation section, below).

The commenter also expressed concern regarding South Island Hector's dolphins, specifically the subpopulation that resides in Te Waewae Bay, noting that they exhibit high site fidelity and

that the survey will coincide with Hector's dolphin calving season. We agree with the concerns raised by this comment, especially given the proximity of the planned track lines of the South Island 2-D survey to Te Waewae Bay (see Figure 2 in the IHA application). In response to this concern, we have incorporated a mitigation measure that would require shutdown of the array upon visual detection of South Island Hector's dolphins at any distance. Based on this comment, we have also added a mitigation measure requiring shutdown of the array upon acoustic detection of a Hector's dolphin during North and South Island surveys, if the acoustic detection can be definitively identified as a Hector's dolphin. More information is provided below in the section on Revisions to the IHA That Have Occurred Since the Proposed IHA.

Regarding the concern that tourism companies could be impacted financially by the planned surveys, this statement was not supported by any information and we cannot speculate as to any potential effects to tourism companies as a result of L-DEO's survey. NMFS also does not have any authority under the MMPA to restrict activities based on potential impacts to tourism, as we do not authorize the activity itself, as described above.

*Comment 15:* A member of the general public expressed concern that the abundances for marine mammals provided in Table 2 in the Notice of the Proposed IHA (82 FR 45116; September 27, 2017) do not reflect abundance estimates for those marine mammals specifically around New Zealand because they incorporate population estimates from the entire Southern Hemisphere. The comment asserted that many of the marine mammal species have unique and important subpopulations. The commenter specifically recommended that the abundance estimates for southern right whale and killer whale be revised.

*NMFS Response:* The commenter did not suggest specific revisions to abundance estimates, with the exception of southern right whale and killer whale. With respect to southern right whale and killer whale the commenter did not provide specific information to support revisions to our abundance estimates for those species. For southern right whales, the commenter referenced an estimated abundance of 200. The source for this estimate was the Web site of a New Zealand based non-governmental organization; however, this Web site does not cite any literature to support this estimate, therefore we have no way

to verify the accuracy of this figure or revise our abundance estimate based on it. For killer whale abundance, the commenter referenced an estimated abundance of 150–200 individuals. The source for this estimate is a NZDOC Web site; however, this Web site does not cite any literature to support this estimate, therefore we have no way to verify the accuracy of this figure or revise our abundance estimate based on it. The commenter did not provide any specific recommendations regarding revisions to abundance estimates for any other species. The commenter refers to marine mammals abundances described in Baker *et al.* (2016); however, that document does not provide abundance estimates for specific marine mammal species.

With regard to the abundance estimates for the other species in Table 2, we made our findings about the applicable management units and abundance estimates for those species based on the best available information.

*Comment 16:* A member of the general public expressed concerns with and offered suggestions about some of the mitigation measures. Specific concerns or suggestions raised by the commenter were related to: Mitigation measures for surveys during nighttime and low visibility; the number and location of PSOs relative to the survey vessel; verification of sound propagation modeling; size of exclusion zones; use of power downs; mitigation for the multibeam echosounder (MBES) and sub-bottom profiler (SBP); and shutdown requirements for Hector's dolphins.

*NMFS Response:* The commenter expressed concern that mitigation measures for surveys during nighttime and low visibility conditions were limited to use of PAM. However, the IHA also requires that L-DEO must provide a night-vision device suited for the marine environment for use during nighttime ramp-up pre-clearance, which must include automatic brightness and gain control, bright light protection, infrared illumination, and optics suited for low-light situations. We have determined that the mitigation measures specific to nighttime and low visibility conditions ensure the least practicable impact on species potentially affected.

The commenter expressed concern that the number of required PSOs is not sufficient, and suggested observers be deployed on other vessels in addition to the *Langseth*. However, we believe that mitigation and monitoring measures required in the IHA can be adequately performed by the number of PSOs required in the IHA, and that this has been demonstrated through numerous

monitoring reports submitted for past IHAs for similar activities (*i.e.*, marine geophysical surveys conducted on the *Langseth*) which have used the same number of PSOs and the same PSO staffing configurations as that required in this IHA. We believe the number and location of PSOs required in the IHA ensure the least practicable impact on species potentially affected.

The commenter expressed concern that sound propagation should be verified in the field to ensure accuracy of the sound propagation models. The commenter expressed that this would be of particular concern in regards to the South Island Hector's dolphin subpopulation that has site fidelity to Te Waewae Bay. As described above, NMFS believes that L-DEO's current modeling approach represents the best available information for NMFS to reach determinations for this IHA. We refer the reader to the response to Comment 1, above, for a more detailed discussion of L-DEO's acoustic modeling methodology. In addition, as described above, results of acoustic modeling represent just one component of the analysis during the MMPA authorization process, as NMFS also takes into consideration other factors associated with the activity and, as described herein, our determination of the appropriate distance for mitigation zones is not based on acoustic modeling. With respect to the use of sound source verification to verify the distances to isopleths that coincide with harassment thresholds for Hector's dolphins, we have incorporated a requirement in the IHA that the array must be shut down upon visual or acoustic detection of Hector's dolphins at any distance, as described below.

The commenter expressed concern about the 500 m exclusion zone and recommended that the exclusion zone should be extended to between 1–1.5 km for all species of marine mammals detected visually and/or acoustically, and referred to more conservative zones required by the Code for some marine mammals. As described in the **Federal Register** Notice of the Proposed IHA (82 FR 45116; September 27, 2017), our use of 500 m as the EZ is based on a reasonable combination of factors. This zone is expected to contain all potential auditory injury for all marine mammals (high-frequency, mid-frequency and low-frequency cetacean functional hearing groups and otariid and phocid pinnipeds) as assessed against peak pressure thresholds (NMFS, 2016) (Tables 7, 8, 9). It is also expected to contain all potential auditory injury for high-frequency and mid-frequency cetaceans as well as otariid and phocid

pinnipeds as assessed against SEL<sub>cum</sub> thresholds (NMFS, 2016) (Tables 7, 8, 9). Additionally, the 500 m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. It has also proven to be practicable through past implementation in seismic surveys conducted for the oil and gas industry. A practicable criterion such as the proposed 500 m EZ has the advantage of simplicity while still providing in most cases a zone larger than relevant auditory injury zones, given realistic movement of source and receiver. With respect to the Code, as described above, NMFS does not have the statutory authority to require L-DEO to abide by the requirements of the Code outside a finding that the Code represents mitigation necessary to effect the least practicable impact on the affected marine mammal species or stocks, which is not the case here. However, we encourage L-DEO to comply with the provisions of the Code to the extent possible.

The commenter expressed concern that the use of the single 40 in<sup>3</sup> airgun during power downs adds more sound to the marine environment, though this comment appears to be based on the mistaken impression that the single airgun may be used "continuously." We note that the use of the single 40 in<sup>3</sup> airgun during power downs is, in fact, permitted for no more than 30 minutes at any time (as described in greater detail in the Mitigation section below). The comment did not cite any substantive information regarding power downs or make any recommendations regarding power downs, therefore we do not further revise the requirements specific to power downs in response to this comment.

The commenter expressed concern with the use of the MBES and SBP, citing a report on a mass stranding of melon-headed whales on the Madagascar coast in 2008 that was attributed to use of a MBES (Southall *et al.*, 2013). The commenter also requested that NMFS require that the MBES be shut down in instances when mitigation measures require shutdown of the airgun array.

A Kongsberg EM 122 MBES would be operated continuously during the proposed surveys, but not during transit to and from the survey areas. Due to the lower source level of the MBES relative to the *Langseth's* airgun array, sounds from the MBES are expected to be effectively subsumed by the sounds from the airgun array when both sources are operational. Thus, NMFS has

determined that any marine mammal potentially exposed to sounds from the MBES would already have been exposed to sounds from the airgun array, which are expected to propagate further in the water, when both sources are operational. During periods when the airguns are inactive and the MBES is operational, NMFS has determined that, given the movement and speed of the vessel and the intermittent and narrow downward-directed nature of the sounds emitted by the MBES (each ping emitted by the MBES consists of eight (in water >1,000 m deep) or four (<1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft), the MBES would result in no more than one or two brief ping exposures to any individual marine mammal, if any exposure were to occur.

Regarding the 2008 mass stranding of melon-headed whales in Madagascar, it should be noted that the report to which the commenter refers states that while the MBES was determined as the most likely cause of the stranding event, there was no unequivocal and easily identifiable single cause of the event, such as those that have been implicated in previous marine mammal mortalities (e.g., entanglement, vessel strike, identified disease) or mass stranding events (e.g., weather, extreme tidal events, predator presence, anthropogenic noise) (Southall *et al.*, 2013). The report also notes that the 2008 mass stranding event in Madagascar was the first known such marine mammal mass stranding event closely associated with relatively high-frequency mapping sonar systems such as MBES and that similar MBES systems are in fact commonly used in hydrographic surveys around the world over large areas without such events being previously documented (Southall *et al.*, 2013). The report found that in the case of the 2008 mass stranding event, environmental, social, or some other confluence of factors (e.g., shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the stranding) may have meant that that particular group of whales was oriented relative to the directional movement of the survey vessel (the vessel moved in a directed manner down the shelf-break; Southall *et al.*, 2013, Figure 2) in such a way that an avoidance response caused animals to move into an unfamiliar and unsafe out-of-habitat area (Southall *et al.*, 2013). NMFS is not aware of any marine mammal stranding events that have been documented as a result of exposure to sounds from MBES since the Madagascar mass stranding event in

2008. Based on the best available information, we do not believe the use of the MBES aboard the *Langseth* will result in marine mammal strandings.

The commenter expressed concern that a shutdown requirement upon any observation of Hector's dolphins at any distance, including upon acoustic detection, is warranted. As described above, based on the best available information, NMFS agrees this measure is warranted, and has incorporated these requirements in the IHA. See the section on Mitigation and the section on Revisions to the IHA That Have Occurred Since the Proposed IHA, below, for details.

In summary, we have determined the mitigation measures contained in the IHA ensure the least practicable impact on marine mammal species potentially affected.

*Comment 17:* A member of the general public expressed that L-DEO should employ alternative research technologies, including Vibroseis and AquaVib, rather than airguns to perform the planned marine geophysical surveys.

*NMFS Response:* At this point in time, the alternative technologies identified by the commenter are not commercially viable or appropriate to meet the needs of the planned surveys. With respect to Vibroseis, there is no commercially available marine vibrator system that can be used for the planned surveys. The AquaVib is a modified version of a land seismic vibrator system that is capable of being placed in very shallow water (*i.e.*, a few meters) and in transition zone environments (*i.e.*, marshes, etc.); however the AquaVib would not be suitable for L-DEO's planned surveys. As suggested by the commenter, NMFS has requested the National Science Foundation to continue to review and consider alternative technologies to support future marine geophysical research.

*Comment 18:* A member of the general public stated that L-DEO should agree to pay for any necropsies of marine mammals that strand around the entire coastline of New Zealand during and after the survey.

*NMFS Response:* NMFS does not anticipate that the survey will result in strandings of marine mammals. We also do not have the authority to require applicants to fund marine mammal necropsies. However, should any stranded animals be observed during the surveys, we have included reporting measures to ensure L-DEO promptly notifies NMFS and the NZDOC (see the section on Reporting, below).

In addition to the comments above, NMFS received comments from the

MSROC and an additional comment from the general public. The comment letter from the MSROC affirmed that there is significant support from the MSROC for the IHA to be issued for the proposed surveys and for the surveys to be conducted. A private citizen expressed concern that animals should not be harmed in the process of surveying or studying them. NMFS considered this comment, however, it did not contain any substantive information regarding the potential for the proposed surveys to harm marine mammals.

#### Revisions to the IHA That Have Occurred Since the Proposed IHA

Based on public comments and a recalculation of the take estimates in the proposed IHA, we have made revisions to the IHA since we published the notice of the proposed IHA in the **Federal Register** (82 FR 45116; September 27, 2017). Those revisions are described below.

*Revisions to the take estimates*—Take estimates in the final IHA have been revised slightly since we published the notice of the proposed IHA in the **Federal Register** (82 FR 45116; September 27, 2017), due to a math error in calculating the 25 percent correction factor for uncertainty in density estimates applied to the overall take estimate. This has resulted in higher take estimates in some cases, and lower take estimates in some cases, in comparison to the take estimates described in the notice of the proposed IHA. Revised take estimates are shown in Tables 10, 11, 12 and 13. These revisions have not impacted our preliminary determinations.

*Shutdown requirement upon visual detection of an aggregation of large whales at any distance*—We have added a mitigation measure that requires that the airgun array be shut down upon visual detection of an aggregation (*i.e.*, six or more animals) of large whales of any species (*i.e.*, sperm whale or any baleen whale) at any distance. This measure is discussed in greater detail in the Mitigation section, below.

*Shutdown requirement upon visual detection of South Island Hector's dolphins*—We have added a mitigation measure that requires that the airgun array be shut down upon visual detection of a Hector's dolphin during the South Island survey. Hector's dolphins have relatively small home ranges and high site fidelity; a survey in 2002 found that the majority of Hector's dolphins ranged less than 60 km (Brager *et al.*, 2002); along-shore home range is typically less than 50 km (Oremus *et al.*, 2012). There are at least three,

genetically distinct, regional populations of South Island Hector's dolphin (Dawson *et al.* 2004); a genetically distinct and localized population occurs in Te Waewae Bay (Mackenzie and Clement, 2014)). Due to the limited range and high site fidelity of the population of Hector's dolphin that occurs in Te Waewae Bay and the proximity of the planned South Island 2-D survey with Te Waewae Bay (see Figure 2 in the IHA application), NMFS has determined that shutdown of the array upon visual detection of Hector's dolphins during the South Island 2-D survey is warranted.

*Shutdown requirement upon acoustic detection of Hector's dolphins, beaked whales, sperm whales, or Kogia spp.*—We have added a mitigation measure that requires that the airgun array be shut down upon acoustic detection of Hector's dolphins, beaked whales, sperm whales, or *Kogia* spp. (with an exception for sperm whales only, if the acoustic detection can be localized and it is determined the sperm whale is outside the 500 m EZ). The requirement to shut down the airgun array upon visual detection of a beaked whale or *Kogia* spp. at any distance was included in the **Federal Register** notice of the proposed IHA (82 FR 45116; September 27, 2017) in recognition of the fact that these species are behaviorally sensitive deep divers and it is possible that disturbance could provoke a severe behavioral response leading to injury (*e.g.*, Wursig *et al.*, 1998; Cox *et al.*, 2006). The requirement to shut down the airgun array upon visual detection of a Hector's dolphin at any distance was included in the **Federal Register** notice of the proposed IHA (82 FR 45116; September 27, 2017), specifically for the planned North Island surveys; we have since added the requirement that the array must be shut down upon observation of a Hector's dolphin, at any distance, during the South Island survey (as described above). The intent behind the requirement to shut down upon acoustic detection is the same as that behind the requirement to shut down upon visual detection. As discussed above, shutdown upon visual detection of sperm whales at any distance is not required in the IHA (the reasoning for this decision is described in further detail in the Mitigation section, below). However, we have determined that meaningful measures are warranted to minimize potential disruption of foraging behavior in sperm whales. This measure (*i.e.*, shutdown upon acoustic detection of beaked whales, sperm whales, or *Kogia* spp., with an exception for sperm whales only, if the acoustic

detection can be localized and it is determined the sperm whale is outside the 500 m EZ) is discussed in greater detail in the Mitigation section, below.

*Revision to power down waiver for certain delphinids*—In the **Federal Register** notice of the proposed IHA (82 FR 45116; September 27, 2017), NMFS proposed a waiver to the requirement to power down the array upon marine mammals observed within or approaching the 500 m exclusion zone that would apply specifically to cetaceans of the genera *Tursiops*, *Delphinus* and *Lissodelphis* that approach the vessel (*e.g.*, bow riding). We have revised this waiver to the requirement to power down the array such that it applies to all small dolphins except spectacled porpoise and bottlenose, hourglass, and Hector's dolphins. We have revised the species for which the power down waiver applies because we had previously mistakenly excluded all dolphins in the genera *Lagenorhynchus* from the power down waiver, based on a concern (which we still hold) that cetaceans considered to be in the high frequency functional hearing group would be more sensitive to airgun sounds; however, as dusky dolphins (*Lagenorhynchus obscurus*) are in fact considered to be in the mid frequency functional hearing group, we believe the power down waiver should apply to dusky dolphins. Additionally, we have removed cetaceans of the genera *Tursiops* (*i.e.*, bottlenose dolphins) from the power down waiver in response to concerns expressed by the NZDOC, as bottlenose dolphins are listed as a species of concern in New Zealand and are particularly susceptible to impacts from human activities due to their coastal nature. Therefore the power down waiver will not apply for bottlenose dolphins. Effectively, the species which are included in the power down waiver are: short-beaked common dolphin (*Delphinus delphis*), dusky dolphin (*Lagenorhynchus obscurus*) and southern right whale dolphin (*Lissodelphis peronii*). Finally, we specified in the proposed IHA that the waiver would only apply if the animals were traveling, including approaching the vessel. However, we have removed that requirement from the IHA, based on an acknowledgement that it would have required subjective on-the-spot decision-making on the part of PSOs, which may have resulted in differential implementation as informed by individual PSOs' experience, background, and/or training.

### Description of Marine Mammals in the Area of Specified Activities

Section 4 of the application summarizes 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' Stock Assessment Reports (SAR; [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/)), and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' Web site ([www.nmfs.noaa.gov/pr/species/mammals/](http://www.nmfs.noaa.gov/pr/species/mammals/)).

Table 2 lists all species with expected potential for occurrence in the southwest Pacific Ocean off New Zealand and summarizes information related to the population, including regulatory status under the MMPA and ESA. The populations of marine mammals considered in this document do not occur within the U.S. EEZ and are therefore not assigned to stocks and are not assessed in NMFS' Stock Assessment Reports ([www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/)). As such, information on potential biological removal (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations.

In addition to the marine mammal species known to occur in planned survey areas, there are 16 species of marine mammals with ranges that are known to potentially occur in the waters of the planned survey areas, but they are categorized as "vagrant" under the New Zealand Threat Classification System (Baker *et al.*, 2016). These species are: The ginkgo-toothed whale (*Mesoplodon ginkgodens*); pygmy beaked whale (*M. peruvianus*); dwarf sperm whale (*Kogia sima*); pygmy killer whale (*Feresa attenuata*); melon-headed whale (*Peponocephala electra*); Risso's dolphin (*Grampus griseus*); Fraser's dolphin (*Lagenodelphis hosei*), pantropical spotted dolphin (*Stenella attenuata*); striped dolphin (*S. coeruleoalba*); rough-toothed dolphin (*Steno bredanensis*); Antarctic fur seal (*Arctocephalus gazelle*); Subantarctic fur seal (*A. tropicalis*); leopard seal (*Hydrurga leptonyx*); Weddell seal (*Leptonychotes weddellii*); crabeater seal (*Lobodon carcinophagus*); and Ross seal (*Ommatophoca rossi*). Except for Risso's

dolphin and leopard seal, for which there have been several sightings and strandings reported in New Zealand (Clement 2010; Torres 2012; Berkenbusch *et al.* 2013; NZDOC 2017),

the other “vagrant” species listed above are not expected to occur in the planned survey areas and are therefore not considered further in this document.

Marine mammal abundance estimates presented in this document represent

the total number of individuals estimated within a particular study or survey area. All values presented in Table 2 are the most recent available at the time of publication.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PLANNED SURVEY AREAS

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Population abundance <sup>2</sup>
<b>Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)</b>				
<b>Family Balaenidae</b>				
Southern right whale .....	<i>Eubalaena australis</i> .....	N/A	E/D;Y	<sup>3</sup> 12,000
<b>Family Balaenopteridae (rorquals)</b>				
Humpback whale .....	<i>Megaptera novaeangliae</i> .....	N/A	-/-; N	<sup>3</sup> 42,000
Bryde’s whale .....	<i>Balaenoptera edeni</i> .....	N/A	-/-; N	<sup>4</sup> 48,109
Common minke whale .....	<i>Balaenoptera acutorostrata</i> .....	N/A	-/-; N	<sup>5,6</sup> 750,000
Antarctic minke whale .....	<i>Balaenoptera bonaerensis</i> .....	N/A	-/-; N	<sup>5,6</sup> 750,000
Sei whale .....	<i>Balaenoptera borealis</i> .....	N/A	E/D;Y	<sup>5</sup> 10,000
Fin whale .....	<i>Balaenoptera physalus</i> .....	N/A	E/D;Y	<sup>5</sup> 15,000
Blue whale .....	<i>Balaenoptera musculus</i> .....	N/A	E/D;Y	<sup>3,5</sup> 3,800
<b>Family Cetotheriidae</b>				
Pygmy right whale .....	<i>Caperea marginata</i> .....	N/A	-/-; N	N/A
<b>Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>				
<b>Family Physeteridae</b>				
Sperm whale .....	<i>Physeter macrocephalus</i> .....	N/A	E/D;Y	<sup>5</sup> 30,000
<b>Family Kogiidae</b>				
Pygmy sperm whale .....	<i>Kogia breviceps</i> .....	N/A	-/-; N	N/A
<b>Family Ziphiidae (beaked whales)</b>				
Cuvier’s beaked whale .....	<i>Ziphius cavirostris</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Arnoux’s beaked whale .....	<i>Berardius armuxii</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Shepherd’s beaked whale .....	<i>Tasmacetus shepherdi</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Hector’s beaked whale .....	<i>Mesoplodon hectori</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
True’s beaked whale .....	<i>Mesoplodon mirus</i> .....	N/A	-/-; N	N/A
Southern bottlenose whale .....	<i>Hyperoodon planifrons</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Gray’s beaked whale .....	<i>Mesoplodon grayi</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Andrew’s beaked whale .....	<i>Mesoplodon bowdoini</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Strap-toothed beaked whale .....	<i>Mesoplodon layardii</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Blainville’s beaked whale .....	<i>Mesoplodon densirostris</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
Spade-toothed beaked whale .....	<i>Mesoplodon traversii</i> .....	N/A	-/-; N	<sup>5,7</sup> 600,000
<b>Family Delphinidae</b>				
Bottlenose dolphin .....	<i>Tursiops truncatus</i> .....	N/A	-/-; N	N/A
Short-beaked common dolphin .....	<i>Delphinus delphis</i> .....	N/A	-/-; N	N/A
Dusky dolphin .....	<i>Lagenorhynchus obscurus</i> .....	N/A	-/-; N	<sup>8</sup> 12,000–20,000
Hourglass dolphin .....	<i>Lagenorhynchus cruciger</i> .....	N/A	-/-; N	<sup>5</sup> 150,000
Southern right whale dolphin .....	<i>Lissodelphis peronii</i> .....	N/A	-/-; N	N/A
Risso’s dolphin .....	<i>Grampus griseus</i> .....	N/A	-/-; N	N/A
South Island Hector’s dolphin .....	<i>Cephalorhynchus hectori hectori</i> .....	N/A	T/D;Y	<sup>9</sup> 14,849
Maui dolphin .....	<i>Cephalorhynchus hectori maui</i> .....	N/A	E/D;Y	<sup>10</sup> 63
False killer whale .....	<i>Pseudorca crassidens</i> .....	N/A	-/-; N	N/A
Killer whale .....	<i>Orcinus orca</i> .....	N/A	-/-; N	<sup>5</sup> 80,000
Long-finned pilot whale .....	<i>Globicephala melas</i> .....	N/A	-/-; N	<sup>5</sup> 200,000
Short-finned pilot whale .....	<i>Globicephala macrorhynchus</i> .....	N/A	-/-; N	N/A
<b>Family Phocoenidae (porpoises)</b>				
Spectacled porpoise .....	<i>Phocoena dioptica</i> .....	N/A	-/-; N	N/A

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PLANNED SURVEY AREAS—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Population abundance <sup>2</sup>
<b>Order Carnivora—Superfamily Pinnipedia</b>				
<b>Family Otariidae (eared seals and sea lions)</b>				
New Zealand fur seal .....	<i>Arctocephalus forsteri</i> .....	N/A	-/-; N	<sup>8</sup> 200,000
New Zealand sea lion .....	<i>Phocartos hookeri</i> .....	N/A	-/-; N	<sup>11</sup> 9,880
<b>Family Phocidae (earless seals)</b>				
Leopard seal .....	<i>Hydrurga leptonyx</i> .....	N/A	-/-; N	<sup>8</sup> 222,000
Southern elephant seal .....	<i>Mirounga leonina</i> .....	N/A	-/-; N	<sup>8</sup> 607,000

N/A = Not available or not assessed.

<sup>1</sup> 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.

<sup>2</sup> Abundance for the Southern Hemisphere or Antarctic unless otherwise noted.

<sup>3</sup> IWC (2016).

<sup>4</sup> IWC (1981).

<sup>5</sup> Boyd (2002).

<sup>6</sup> Dwarf and Antarctic minke whales combined.

<sup>7</sup> All Antarctic beaked whales combined.

<sup>8</sup> Estimate for New Zealand; NZDOC 2017.

<sup>9</sup> Estimate for New Zealand; MacKenzie and Clement 2016.

<sup>10</sup> Estimate for New Zealand; Baker *et al.* (2016).

<sup>11</sup> Geschke and Chilvers (2009).

All species that could potentially occur in the planned survey areas are included in table 2. However, of the species described in Table 2, the temporal and/or spatial occurrence of one subspecies, the Maui dolphin (also known as the North Island Hector's dolphin), is such that take is not expected to occur as a result of the surveys. The Maui dolphin is one of two subspecies of Hector's dolphin (the other being the South Island Hector's dolphin), both of which are endemic to New Zealand. The Maui dolphin has been demonstrated to be genetically distinct from the South Island subspecies of Hector's dolphin based on studies of mitochondrial and nuclear DNA (Pichler *et al.* 1998). It is currently considered one of the rarest dolphins in the world with a population size estimated at just 55–63 individuals (Hamner *et al.* 2014; Baker *et al.* 2016). Historically, Hector's dolphins are thought to have ranged along almost the entire coastlines of both the North and South Islands of New Zealand, though their present range is substantially smaller (Pichler 2002). The range of the Maui dolphin in particular has undergone a marked reduction (Dawson *et al.* 2001; Slooten *et al.* 2005), with the subspecies now restricted to the northwest coast of the North Island, between Maunganui Bluff in the north and Whanganui in the south (Currey *et al.* 2012). Occasional sightings and strandings have also been reported from

areas further south along the west coast as well as possible sightings in other areas such as Hawke's Bay on the east coast of North Island (Baker 1978, Russell 1999, Ferreira and Roberts 2003, Slooten *et al.* 2005, DuFresne 2010, Berkenbusch *et al.* 2013; Torres *et al.* 2013; Patiño-Pérez 2015; NZDOC 2017) though it is unclear whether those individuals may have originated from the South Island Hector's dolphin populations. A 2016 NMFS Draft Status Review Report concluded the Maui dolphin is facing a high risk of extinction as a result of small population size, reduced genetic diversity, low theoretical population growth rates, evidence of continued population decline, and the ongoing threats of fisheries bycatch, disease, mining and seismic disturbances (Manning and Grantz 2016). Due to its extremely low population size and the fact that the subspecies is not expected to occur in the planned survey areas off the North Island, take of Maui dolphins is not expected to occur as a result of L-DEO's activities. Therefore the Maui dolphin is not discussed further beyond the explanation provided here.

We have reviewed L-DEO's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. We refer the reader to Section 4 of L-DEO's IHA application, rather than reprinting the information

here. A detailed description of the species likely to be affected by L-DEO's survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 45116; September 27, 2017). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site ([www.nmfs.noaa.gov/pr/species/mammals/](http://www.nmfs.noaa.gov/pr/species/mammals/)) for generalized species accounts.

#### Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from marine geophysical survey activities have the potential to result in behavioral harassment and, in a limited number of instances, auditory injury (PTS) of marine mammals in the vicinity of the action area. The **Federal Register** notice of proposed IHA (82 FR 45116; September 27, 2017) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information. No instances of serious injury or mortality are

expected as a result of L-DEO's survey activities.

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of whether the number of takes is "small" 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 are primarily by Level B harassment, as use of the seismic airguns have 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 mysticetes and high frequency cetaceans (*i.e.*, *Kogia* spp.), due to larger predicted auditory injury zones for those functional hearing groups. Auditory injury is unlikely to occur for mid-frequency species given very small modeled zones of injury for those species. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1)

Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of 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. Below, we describe these components in more detail and present the exposure estimate and associated numbers of take authorized.

*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.* 2011). Based on the best available science 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 to fall under Level B harassment when exposed to

underwater anthropogenic noise above received levels of 120 dB re 1 micropascal ( $\mu$ Pa) (rms) for continuous sources (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1  $\mu$ Pa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. L-DEO's activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1  $\mu$ Pa (rms) criteria is applicable for analysis of Level B harassment.

*Level A harassment for non-explosive sources*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Technical Guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, reflects the best available science, and better predicts the potential for auditory injury than does NMFS' historical criteria.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: <http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm>. As described above, L-DEO's activity includes the use of intermittent and impulsive seismic sources.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT IN MARINE MAMMALS

Hearing group	PTS onset thresholds	
	Impulsive *	Non-impulsive
Low-Frequency (LF) Cetaceans .....	$L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB .....	$L_{E,LF,24h}$ : 199 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.

**Note:** \* 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  $\mu$ Pa, and cumulative sound exposure level (LE) has a reference value of 1  $\mu$ Pa<sup>2</sup>s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that will feed into estimating the area ensonified above the relevant acoustic thresholds.

The survey entails use of a 36-airgun array with a total discharge of 6,600 in<sup>3</sup> at a tow depth of 9 m and an 18-airgun array with a total discharge of 3,300 in<sup>3</sup> at a tow depth of 7–9 m. Received sound levels were predicted by L-DEO’s model (Diebold *et al.*, 2010) as a function of distance from the 36-airgun array and 18-airgun array and for a single 40-in<sup>3</sup> airgun which would be used during power downs; all models used a 9 m tow depth. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (approximately 1600 m), intermediate water depth on the slope (approximately 600–1,100 m), and shallow water (approximately 50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate-water cases, L-DEO determined that the field measurements cannot be used readily to derive zone of ensonification, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to water depths of approximately 2,000 m (See Appendix H in NSF-USGS 2011). At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data recorded at the deep and slope sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the mitigation model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant. Please see the IHA application for further discussion of summarized results.

For deep water (>1,000 m), L-DEO used the deep-water radii obtained from model results down to a maximum water depth of 2000 m. The radii for intermediate water depths (100–1,000 m) were derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (See Fig. 16 in Appendix H of NSF-USGS, 2011). The shallow-water radii were obtained by scaling the empirically derived measurements from the Gulf of Mexico calibration survey to account for the differences in tow depth between the calibration survey (6 m) and the planned surveys (9 m). A simple scaling factor is calculated from the ratios of the isopleths determined by the deep-water L-DEO model, which are essentially a measure of the energy radiated by the source array.

Measurements have not been reported for the single 40-in<sup>3</sup> airgun. L-DEO model results are used to determine the 160-dB (rms) radius for the 40-in<sup>3</sup> airgun at a 9 m tow depth in deep water (See LGL 2017, Figure 6). For intermediate-water depths, a correction factor of 1.5 was applied to the deep-water model results. For shallow water, a scaling of the field measurements obtained for the 36-airgun array was used.

L-DEO’s modeling methodology is described in greater detail in the IHA application (LGL 2017) and we refer the reader to that document rather than repeating it here. The estimated distances to the Level B harassment isopleth for the *Langseth’s* 36-airgun array, 18-airgun array, and the single 40-in<sup>3</sup> airgun are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM R/V LANGSETH SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Water depth (m)	Predicted distance to threshold (160 dB re 1 $\mu$ Pa) <sup>1</sup> (m)
1 airgun, 40 in <sup>3</sup> .....	>1,000	388
	100–1,000	582
	<100	938
18 airguns, 3,300 in <sup>3</sup> ...	>1,000	3,562
	100–1,000	5,343

TABLE 4—PREDICTED RADIAL DISTANCES FROM R/V LANGSETH SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD—Continued

Source and volume	Water depth (m)	Predicted distance to threshold (160 dB re 1 $\mu$ Pa) <sup>1</sup> (m)
36 airguns, 6,600 in <sup>3</sup> ...	<100	10,607
	>1,000	5,629
	100–1,000	8,444
	<100	22,102

<sup>1</sup> Distances for depths >1,000 m are based on L-DEO model results. Distance for depths 100–1,000 m are based on L-DEO model results with a 1.5  $\times$  correction factor between deep and intermediate water depths. Distances for depths <100 m are based on empirically derived measurements in the Gulf of Mexico with scaling applied to account for differences in tow depth.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L-DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.*, airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL<sub>cum</sub> and peak sound pressure metrics (NMFS 2016). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). The SEL<sub>cum</sub> metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL<sub>cum</sub> thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL<sub>cum</sub> and peak SPL for the *Langseth* airgun array were derived from calculating the modified farfield signature (Table 5). The farfield

signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (e.g., 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array’s geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do

not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield

signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L-DEO used the acoustic modeling methodology as used for Level B takes with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

TABLE 5—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE R/V LANGSETH 6,600 IN<sup>3</sup> AIRGUN ARRAY, 3,300 IN<sup>3</sup> AIRGUN ARRAY, AND SINGLE 40 IN<sup>3</sup> AIRGUN

	Low frequency cetaceans ( $L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB)	Mid frequency cetaceans ( $L_{pk,flat}$ : 230 dB; $L_{E,MF,24h}$ : 185 dB)	High frequency cetaceans ( $L_{pk,flat}$ : 202 dB; $L_{E,HF,24h}$ : 155 dB)	Phocid pinnipeds (underwater) ( $L_{pk,flat}$ : 218 dB; $L_{E,HF,24h}$ : 185 dB)	Otariid pinnipeds (underwater) ( $L_{pk,flat}$ : 232 dB; $L_{E,HF,24h}$ : 203 dB)
6,600 in <sup>3</sup> airgun array (Peak SPL <sub>flat</sub> )	250.77	252.76	249.44	250.50	252.72
6,600 in <sup>3</sup> airgun array (SEL <sub>cum</sub> )	232.75	232.67	232.83	232.67	231.07
3,300 in <sup>3</sup> airgun array (Peak SPL <sub>flat</sub> )	246.34	250.98	243.64	246.03	251.92
3,300 in <sup>3</sup> airgun array (SEL <sub>cum</sub> )	226.22	226.13	226.75	226.13	226.89
40 in <sup>3</sup> airgun (Peak SPL <sub>flat</sub> )	224.02	225.16	224.00	224.09	226.64
40 in <sup>3</sup> airgun (SEL <sub>cum</sub> )	202.33	202.35	203.12	202.35	202.61

In order to more realistically incorporate the Technical Guidance’s weighting functions over the seismic array’s full acoustic band, unweighted spectrum data for the *Langseth’s* airgun array (modeled in 1 hertz (Hz) bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User

Spreadsheet (*i.e.*, to override the Spreadsheet’s more simple weighting factor adjustment). Using the User Spreadsheet’s “safe distance” methodology for mobile sources (described by Sivle *et al.*, 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to each of the three planned surveys (Table 1), potential radial distances to auditory injury zones were then calculated for SEL<sub>cum</sub> thresholds. Inputs to the User Spreadsheets in the form of estimated SLs are shown in Table 5. User Spreadsheets used by L-DEO to estimate distances to Level A harassment isopleths (SEL<sub>cum</sub>) for the

36-airgun array, 18-airgun array, and the single 40 in<sup>3</sup> airgun for the South Island 2-D survey, North Island 2-D survey, and North Island 3-D survey are shown in Tables 3, 4, 7, 10, 11, and 12, of the IHA application (LGL 2017). Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the South Island 2-D survey, North Island 2-D survey, and North Island 3-D survey are shown in Tables 6, 7 and 8, respectively. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL<sub>cum</sub> and Peak SPL<sub>flat</sub>) is exceeded (*i.e.*, metric resulting in the largest isopleth).

TABLE 6—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS DURING NORTH ISLAND 2-D SURVEY

	Low frequency cetaceans ( $L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB)	Mid frequency cetaceans ( $L_{pk,flat}$ : 230 dB; $L_{E,MF,24h}$ : 185 dB)	High frequency cetaceans ( $L_{pk,flat}$ : 202 dB; $L_{E,HF,24h}$ : 155 dB)	Phocid pinnipeds (underwater) ( $L_{pk,flat}$ : 218 dB; $L_{E,HF,24h}$ : 185 dB)	Otariid pinnipeds (underwater) ( $L_{pk,flat}$ : 232 dB; $L_{E,HF,24h}$ : 203 dB)
6,600 in <sup>3</sup> airgun array (Peak SPL <sub>flat</sub> )	38.8	13.8	229.2	42.2	10.9
6,600 in <sup>3</sup> airgun array (SEL <sub>cum</sub> )	501.3	0	1.2	13.2	0
40 in <sup>3</sup> airgun (Peak SPL <sub>flat</sub> )	1.8	0.6	12.6	2.0	0.5
40 in <sup>3</sup> airgun (SEL <sub>cum</sub> )	0.4	0	0	0	0

TABLE 7—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS DURING NORTH ISLAND 3-D SURVEY

	Low frequency cetaceans ( $L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB)	Mid frequency cetaceans ( $L_{pk,flat}$ : 230 dB; $L_{E,MF,24h}$ : 185 dB)	High frequency cetaceans ( $L_{pk,flat}$ : 202 dB; $L_{E,HF,24h}$ : 155 dB)	Phocid Pinnipeds (Underwater) ( $L_{pk,flat}$ : 218 dB; $L_{E,HF,24h}$ : 185 dB)	Otariid Pinnipeds (Underwater) ( $L_{pk,flat}$ : 232 dB; $L_{E,HF,24h}$ : 203 dB)
3,300 in <sup>3</sup> airgun array (Peak SPL <sub>flat</sub> )	23.3	11.2	119.0	25.2	9.9
3,300 in <sup>3</sup> airgun array (SEL <sub>cum</sub> )	73.1	0	0.3	2.8	0
40 in <sup>3</sup> airgun (Peak SPL <sub>flat</sub> )	1.8	0.6	12.6	2.0	0.5
40 in <sup>3</sup> airgun (SEL <sub>cum</sub> )	0.4	0	0	0	0

TABLE 8—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS DURING SOUTH ISLAND 2-D SURVEY

	Low frequency cetaceans ( $L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB)	Mid frequency cetaceans ( $L_{pk,flat}$ : 230 dB; $L_{E,MF,24h}$ : 185 dB)	High frequency cetaceans ( $L_{pk,flat}$ : 202 dB; $L_{E,HF,24h}$ : 155 dB)	Phocid Pinnipeds (Underwater) ( $L_{pk,flat}$ : 218 dB; $L_{E,HF,24h}$ : 185 dB)	Otariid Pinnipeds (Underwater) ( $L_{pk,flat}$ : 232 dB; $L_{E,HF,24h}$ : 203 dB)
6,600 in <sup>3</sup> airgun array (Peak SPL <sub>flat</sub> )	38.8	13.8	229.2	42.2	10.9
6,600 in <sup>3</sup> airgun array (SEL <sub>cum</sub> )	376.0	0	0.9	9.9	0
40 in <sup>3</sup> airgun (Peak SPL <sub>flat</sub> )	1.8	0.6	12.6	2.0	0.5
40 in <sup>3</sup> airgun (SEL <sub>cum</sub> )	0.3	0	0	0	0

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3-D 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 mobile sources, such as the planned seismic surveys, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. The best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take).

No systematic aircraft- or ship-based surveys have been conducted for marine mammals in offshore waters of the South Pacific Ocean off New Zealand that can be used to estimate species densities that we are aware of, with the exception of Hector’s dolphin surveys that have occurred off the South Island. Densities for Hector’s dolphins off the

South Island were estimated using averaged estimated summer densities from the most southern stratum of an East Coast South Island survey (Otago) and a West Coast South Island survey (Milford Sound), both in three offshore strata categories (0–4 nautical miles (nm), 4–12 nm, and 12–20 nm; MacKenzie and Clement 2014, 2016). The estimated density for Hector’s dolphins for the South Island 2-D survey was based on the proportion of that survey occurring in each offshore stratum.

For cetacean species other than Hector’s dolphin, densities were derived from data available for the Southern Ocean (Butterworth *et al.* 1994; Kasamatsu and Joyce 1995) (See Table 17 in the IHA application). Butterworth *et al.* (1994) provided comparable data for sei, fin, blue, and sperm whales extrapolated to latitudes 30–40° S., 40–50° S., and 50–60° S. based on Japanese scouting vessel data from 1965/66–1977/78 and 1978/79–1987/88. Densities were calculated for these species based on abundances and surface areas provided in Butterworth *et al.* (1994) using the mean density for the more recent surveys (1978/79–1987/88) and the 30–40° S. and 40–50° S. strata, because the planned survey areas are between ~37° S. and 50° S. Densities were corrected for mean trackline detection probability,  $g(0)$  availability bias, using mean  $g(0)$  values provided for these species during NMFS Southwest Fisheries Science Center

ship-based surveys between 1991–2014 (Barlow 2016). Data for the humpback whale was also presented in Butterworth *et al.* (1994), but, based on the best available information, it was determined that the density values presented for humpback whales in Butterworth *et al.* (1994) were likely lower than would be expected in the planned survey areas, thus the density for humpback whales was ultimately calculated in the same way as for the baleen whales for which density data was unavailable. Kasamatsu and Joyce (1995) provided data for beaked whales, killer whales, long-finned pilot whales, and hourglass dolphins, based on surveys conducted as part of the International Whaling Commission/ International Decade of Cetacean Research—Southern Hemisphere Minke Whale Assessment, started in 1978/79, and the Japanese sightings survey program started in 1976/77. Densities for these species were calculated based on abundances and surface areas provided in Kasamatsu and Joyce (1995) for Antarctic Areas V EMN and VI WM, which represent the two areas reported in Kasamatsu and Joyce (1995) that are nearest to the planned South Island survey area. Densities were corrected for availability bias using mean  $g(0)$  values provided by Kasamatsu and Joyce (1995) for beaked whales, killer whales, and long-finned pilot whales, and provided by Barlow (2016) for the Hourglass dolphin using the mean  $g(0)$  calculated for unidentified dolphins during NMFS

Southwest Fisheries Science Center ship-based surveys between 1991–2014.

For the remaining cetacean species, the relative abundances of individual species expected to occur in the survey areas were estimated within species groups. The relative abundances of these species were estimated based on several factors, including information on marine mammal observations from areas near the planned survey areas (e.g., monitoring reports from previous IHAs (NMFS, 2015); datasets of opportunistic sightings (Torres *et al.*, 2014); and analyses of observer data from other marine geophysical surveys conducted in New Zealand waters (Blue Planet, 2016)), information on latitudinal ranges and group sizes of marine mammals in New Zealand waters (e.g., Jefferson *et al.*, 2015; NABIS, 2017; Perrin *et al.*, 2009), and other information on marine mammals in and near the planned survey areas (e.g., data on marine mammal bycatch in New Zealand fisheries (Berkenbush *et al.*, 2013), data on marine mammal strandings (New Zealand Marine Mammal Strandings and Sightings Database); and input from subject matter experts (pers. comm., E. Slooten, Univ. of Otago, to H. Goldstein, NMFS, April 11, 2015)).

For each species group (*i.e.*, mysticetes), densities of species for which data were available were averaged to get a mean density for the group (e.g., densities of fin, sei, and blue whale were averaged to get a mean density for mysticetes). Relative abundances of those species were then averaged to get mean relative abundances (e.g., relative abundance of fin, sei, and blue whale were averaged to get a mean relative abundance for mysticetes). For the species for which density data was unavailable, their relative abundance score was multiplied by the mean density of their respective species group (*i.e.*, relative abundance of minke whale was multiplied by mean density for mysticetes). The product was then divided by the mean relative abundance of the species group to come up with a density estimate. The fin, sei, and blue whale densities calculated from Butterworth *et al.* (1994) were proportionally averaged and used to estimate the densities of the remaining

mysticetes. The sperm whale density calculated from Butterworth *et al.* (1994) was used to estimate the density of the other *Physeteridae* species, the pygmy sperm whale. The hourglass dolphin, killer whale, and long-finned pilot whale densities calculated from Kasamatsu and Joyce (1995) were proportionally averaged and used to estimate the densities of the other *Delphinidae* for which density data was not available. For beaked whales, the beaked whale density calculated from Kasamatsu and Joyce (1995) was proportionally allocated according to each beaked whale species' estimated relative abundance value.

We are not aware of any information regarding at-sea densities of pinnipeds off New Zealand. As such, a surrogate species (northern fur seal) was used to estimate offshore pinniped densities for the planned surveys. The at-sea density of northern fur seals reported in Bonnell *et al.* (1992), based on systematic aerial surveys conducted in 1989–1990 in offshore areas off the west coast of the U.S., was used to estimate the numbers of pinnipeds that might be present off New Zealand. The northern fur seal density reported in Bonnell *et al.* (1992) was used as the New Zealand fur seal density. Densities for the other three pinniped species expected to occur in the planned survey areas were proportionally allocated relative to the value of the density of the northern fur seal, in accordance to the estimated relative abundance value of each of the other pinniped species.

NMFS acknowledges there is some uncertainty related to the estimated density data and the assumptions used in their calculations. Given the lack of available data on marine mammal density in the planned survey areas, the approach used is based on the best available data. In recognition of the uncertainties in the density data, we have included an additional 25 percent contingency in take estimates to account for the fact that density estimates used to estimate take may be underestimates of actual densities of marine mammals in the survey area. However, there is no information to suggest that the density estimates used are in fact underestimates.

#### Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 9), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days (*i.e.*, 35 days for the North Island 2-D survey, 33 days for the North Island 3-D survey, and 22 days for the South Island 2-D survey). The product is then multiplied by 1.25 to account for an additional 25 percent contingency for potential additional seismic operations (associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard, as proposed by L-DEO). This results in an estimate of the total areas (km<sup>2</sup>) expected to be ensonified to the Level A harassment and Level B harassment thresholds. For purposes of Level B take calculations, areas estimated to be ensonified to Level A harassment thresholds are subtracted from total areas estimated to be ensonified to Level B harassment thresholds in order to avoid double counting the animals taken (*i.e.*, if an animal is taken by Level A harassment, it is not also counted as taken by Level B harassment). The marine mammals predicted to occur within these respective areas, based on estimated densities, are assumed to be incidentally taken. The take estimates were then multiplied by an additional 25 percent contingency in acknowledgement of uncertainties in available density estimates, as described above.

TABLE 9—AREAS (km<sup>2</sup>) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS PER DAY FOR THREE PLANNED SEISMIC SURVEYS OFF NEW ZEALAND

Survey	Level B harassment threshold All marine mammals	Level A harassment threshold <sup>1</sup>				
		Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Otariid pinnipeds	Phocid pinnipeds
North Island 2-D Survey .....	1,931.3	144.5	3.9	65.8	3.1	12.0
North Island 3-D Survey .....	1,067.3	29.1	4.5	47.5	3.9	10.0
South Island 2-D Survey .....	1,913.4	111.1	4.1	86.3	3.2	12.4

<sup>1</sup> Level A ensonified areas are estimated based on the greater of the distances calculated to Level A isopleths using dual criteria (SEL<sub>cum</sub> and peak SPL).

**Note:** Estimated areas shown for single day do not include additional 50 percent contingency.

Factors including water depth, array configuration, and proportion of each survey occurring within territorial seas (versus within the EEZ) were also accounted for in estimates of ensonified areas. This was accomplished by selecting a track line for a single day (for each of the three planned surveys) that were representative of the entire planned survey(s) and using that representative track line to calculate daily ensonified areas. Daily track line distance was selected depending on array configuration (*i.e.*, 160 km per day for the planned 2-D surveys, 200 km per day for the planned 3-D survey). Representative daily track lines were

chosen to reflect the proportion of water depths (*i.e.*, less than 100 m, 100–1,000 m, and greater than 1,000 m) expected to occur for that entire survey (Table 4) as distances to isopleths corresponding to harassment vary depending on water depth (Table 4), and water depths vary considerably within the planned survey areas (Table 1). Representative track lines were also selected to reflect the amount of effort in the New Zealand territorial sea (versus within the New Zealand EEZ), for each of the three surveys, as L–DEO is not subject to the requirements of the MMPA within the New Zealand territorial sea. For example, for the North Island 2-D

survey approximately nine percent of survey effort would occur in the New Zealand territorial sea (Table 1). Thus, representative track lines that were chosen also had approximately 9 percent of survey effort in territorial seas; the resultant ensonified areas within territorial seas were excluded from take calculations.

Estimated takes for all marine mammal species are shown in Tables 10, 11, 12 and 13. As described above, we authorize the incidental takes that are expected to occur as a result of the planned surveys within the New Zealand EEZ but outside of the New Zealand territorial sea.

TABLE 10—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED DURING L–DEO’S NORTH ISLAND 2-D SEISMIC SURVEY OFF NEW ZEALAND

Species	Density (#/1,000 km <sup>2</sup> )	Level A takes authorized <sup>1</sup>	Level B takes authorized <sup>1</sup>	Total Level A and Level B takes authorized <sup>1</sup>
Southern right whale .....	0.24	2	23	25
Pygmy right whale .....	0.10	1	9	10
Humpback whale .....	0.24	2	23	25
Bryde’s whale .....	0.14	1	14	15
Common minke whale .....	0.14	1	14	15
Antarctic minke whale .....	0.14	1	14	15
Sei whale .....	0.14	1	14	15
Fin whale .....	0.25	2	24	26
Blue whale .....	0.04	0	4	4
Sperm whale .....	2.89	1	305	306
Cuvier’s beaked whale .....	2.62	1	276	277
Arnoux’s beaked whale .....	2.62	1	276	277
Southern bottlenose whale .....	1.74	0	184	184
Shepard’s beaked whale .....	1.74	0	184	184
Hector’s beaked whale .....	1.74	0	184	184
True’s beaked whale .....	0.87	0	92	92
Gray’s beaked whale .....	3.49	1	368	369
Andrew’s beaked whale .....	1.74	0	184	184
Strap-toothed whale .....	2.62	1	276	277
Blainville’s beaked whale .....	0.87	0	92	92
Spade-toothed whale .....	0.87	0	92	92
Bottlenose dolphin .....	5.12	1	540	541
Short-beaked common dolphin .....	10.25	2	1080	1082
Dusky dolphin .....	5.12	1	540	541
Southern right-whale dolphin .....	3.07	1	324	325
Risso’s dolphin .....	2.05	0	216	216
False killer whale .....	3.07	1	324	325
Killer whale .....	1.91	0	202	202
Long-finned pilot whale .....	8.28	2	872	874
Short-finned pilot whale .....	4.10	1	432	433

TABLE 10—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED DURING L-DEO'S NORTH ISLAND 2-D SEISMIC SURVEY OFF NEW ZEALAND—Continued

Species	Density (#/1,000 km <sup>2</sup> )	Level A takes authorized <sup>1</sup>	Level B takes authorized <sup>1</sup>	Total Level A and Level B takes authorized <sup>1</sup>
Pygmy sperm whale .....	1.74	6	177	183
Hourglass dolphin .....	4.16	15	424	439
Hector's dolphin .....	0	0	0	0
Spectacled porpoise .....	0	0	0	0
New Zealand fur seal .....	22.50	4	2373	2377
New Zealand sea lion .....	0	0	0	0
Southern elephant seal .....	4.50	3	472	475
Leopard seal .....	2.25	1	236	237

<sup>1</sup> Includes additional 25 percent contingency for potential additional survey operations and additional 25 percent contingency to account for uncertainties in density estimates.

TABLE 11—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED DURING L-DEO'S NORTH ISLAND 3-D SEISMIC SURVEY OFF NEW ZEALAND

Species	Density (#/1,000 km <sup>2</sup> )	Level A takes authorized <sup>1</sup>	Level B takes authorized <sup>1</sup>	Total Level A and Level B takes authorized <sup>1</sup>
Southern right whale .....	0.24	0	13	13
Pygmy right whale .....	0.10	0	5	5
Humpback whale .....	0.24	0	13	13
Bryde's whale .....	0.14	0	8	8
Common minke whale .....	0.14	0	8	8
Antarctic minke whale .....	0.14	0	8	8
Sei whale .....	0.14	0	8	8
Fin whale .....	0.25	0	13	13
Blue whale .....	0.04	0	2	2
Sperm whale .....	2.89	1	159	160
Cuvier's beaked whale .....	2.62	1	143	144
Arnoux's beaked whale .....	2.62	1	143	144
Southern bottlenose whale .....	1.74	0	96	96
Shepard's beaked whale .....	1.74	0	96	96
Hector's beaked whale .....	1.74	0	96	96
True's beaked whale .....	0.87	0	48	48
Gray's beaked whale .....	3.49	1	191	192
Andrew's beaked whale .....	1.74	0	96	96
Strap-toothed whale .....	2.62	1	143	144
Blainville's beaked whale .....	0.87	0	48	48
Spade-toothed whale .....	0.87	0	48	48
Bottlenose dolphin .....	5.12	1	281	282
Short-beaked common dolphin .....	10.25	2	562	564
Dusky dolphin .....	5.12	1	281	282
Southern right-whale dolphin .....	3.07	1	168	169
Risso's dolphin .....	2.05	0	112	112
False killer whale .....	3.07	1	168	169
Killer whale .....	1.91	0	105	105
Long-finned pilot whale .....	8.28	2	454	456
Short-finned pilot whale .....	4.10	1	225	226
Pygmy sperm whale .....	1.74	4	91	95
Hourglass dolphin .....	4.16	10	219	229
Hector's dolphin .....	0	0	0	0
Spectacled porpoise .....	0	0	0	0
New Zealand fur seal .....	22.50	5	1234	1239
New Zealand sea lion .....	0	0	0	0
Southern elephant seal .....	4.50	2	245	247
Leopard seal .....	2.25	1	123	124

<sup>1</sup> Includes additional 25 percent contingency for potential additional survey operations and additional 25 percent contingency to account for uncertainties in density estimates.

TABLE 12—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED DURING L-DEO'S SOUTH ISLAND 2-D SEISMIC SURVEY OFF NEW ZEALAND

Species	Density (#/1,000 km <sup>2</sup> )	Level A takes authorized <sup>1</sup>	Level B takes authorized <sup>1</sup>	Total Level A and Level B takes authorized <sup>1</sup>
Southern right whale	0.24	1	15	16
Pygmy right whale	0.10	0	6	6
Humpback whale	0.24	1	12	13
Bryde's whale	0.14	0	0	0
Common minke whale	0.14	1	9	10
Antarctic minke whale	0.14	1	9	10
Sei whale	0.14	1	9	10
Fin whale	0.25	1	15	16
Blue whale	0.04	0	2	2
Sperm whale	2.89	0	190	190
Cuvier's beaked whale	2.62	0	172	172
Arnoux's beaked whale	2.62	0	172	172
Southern bottlenose whale	1.74	0	114	114
Shepard's beaked whale	1.74	0	114	114
Hector's beaked whale	1.74	0	114	114
True's beaked whale	0.87	0	57	57
Gray's beaked whale	3.49	0	229	229
Andrew's beaked whale	1.74	0	114	114
Strap-toothed whale	2.62	0	172	172
Blainville's beaked whale	0.87	0	57	57
Spade-toothed whale	0.87	0	57	57
Bottlenose dolphin	5.12	1	314	315
Short-beaked common dolphin	10.25	1	314	315
Dusky dolphin	5.12	1	502	503
Southern right-whale dolphin	3.07	0	188	188
Risso's dolphin	2.05	0	126	126
False killer whale	3.07	1	188	189
Killer whale	1.91	0	126	126
Long-finned pilot whale	8.28	1	543	544
Short-finned pilot whale	4.10	0	126	126
Pygmy sperm whale	1.74	5	109	114
Hourglass dolphin	4.16	12	261	273
Hector's dolphin	0	0	2	2
Spectacled porpoise	0	6	120	126
New Zealand fur seal	22.50	2	1477	1479
New Zealand sea lion	0	1	591	592
Southern elephant seal	4.50	2	294	296
Leopard seal	2.25	1	147	148

<sup>1</sup> Includes additional 25 percent contingency for potential additional survey operations and additional 25 percent contingency to account for uncertainties in density estimates.

TABLE 13—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED DURING L-DEO'S NORTH ISLAND 3-D SURVEY, NORTH ISLAND 2-D SURVEY, AND SOUTH ISLAND 3-D SURVEYS OF THE R/V LANGSETH OFF NEW ZEALAND

Species	Density (#/1,000 km <sup>2</sup> )	Level A takes authorized <sup>1</sup>	Level B takes authorized <sup>1</sup>	Total Level A and Level B takes authorized <sup>1</sup>	Total author- ized Level A and Level B takes as a percentage of population
Southern right whale	0.24	3	51	54	0.45
Pygmy right whale	0.10	1	20	21	N.A.
Humpback whale	0.19	3	48	51	0.12
Bryde's whale	0.00	1	22	23	0.05
Common minke whale	0.14	2	31	33	<0.01
Antarctic minke whale	0.14	2	31	33	<0.01
Sei whale	0.14	2	31	33	0.33
Fin whale	0.25	3	52	55	0.37
Blue whale	0.04	0	8	8	0.21
Sperm whale	2.89	2	654	656	2.19
Cuvier's beaked whale	2.62	2	591	593	0.10
Arnoux's beaked whale	2.62	2	591	593	0.10
Southern bottlenose whale	1.74	0	394	394	0.07
Shepard's beaked whale	1.74	0	394	394	0.07
Hector's beaked whale	1.74	0	394	394	0.07

TABLE 13—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED DURING L–DEO’S NORTH ISLAND 3-D SURVEY, NORTH ISLAND 2-D SURVEY, AND SOUTH ISLAND 3-D SURVEYS OF THE R/V LANGSETH OFF NEW ZEALAND—Continued

Species	Density (#/1,000 km <sup>2</sup> )	Level A takes authorized <sup>1</sup>	Level B takes authorized <sup>1</sup>	Total Level A and Level B takes authorized <sup>1</sup>	Total authorized Level A and Level B takes as a percentage of population
True’s beaked whale .....	0.87	0	197	197	N.A.
Gray’s beaked whale .....	3.49	2	788	790	0.13
Andrew’s beaked whale .....	1.74	0	394	394	0.07
Strap-toothed whale .....	2.62	2	591	593	0.10
Blainville’s beaked whale .....	0.87	0	197	197	0.03
Spade-toothed whale .....	0.87	0	197	197	0.03
Bottlenose dolphin .....	4.78	3	1135	1138	N.A.
Short-beaked common dolphin .....	4.78	5	1956	1961	N.A.
Dusky dolphin .....	7.65	3	1323	1326	11.05
Southern right-whale dolphin .....	2.87	2	680	682	N.A.
Risso’s dolphin .....	1.91	0	454	454	N.A.
False killer whale .....	2.87	3	680	683	N.A.
Killer whale .....	1.91	0	433	433	0.54
Long-finned pilot whale .....	8.28	5	1869	1874	0.94
Short-finned pilot whale .....	1.91	2	783	785	N.A.
Pygmy sperm whale .....	1.74	15	377	392	N.A.
Hourglass dolphin .....	4.16	37	904	941	0.63
Hector’s dolphin .....	0.04	0	2	2	0.01
Spectacled porpoise .....	1.91	6	120	126	N.A.
New Zealand fur seal .....	22.50	11	5084	5095	2.55
New Zealand sea lion .....	9.00	1	591	592	5.99
Southern elephant seal .....	4.50	7	1011	1018	0.17
Leopard seal .....	2.25	3	506	509	0.23

<sup>1</sup> Includes additional 25 percent contingency for potential additional survey operations and additional 25 percent contingency to account for uncertainties in density estimates.

As described above, the take estimates shown in Tables 10, 11, 12 and 13 have been revised slightly since we published the notice of the proposed IHA in the **Federal Register** (82 FR 45116; September 27, 2017). Revised take estimates are higher in some cases, and lower in some cases, in comparison to the take estimates described in the notice of the proposed IHA. These revisions have not affected our preliminary determinations.

It should be noted that the take numbers shown in Tables 10, 11, 12 and 13 are expected to be conservative for several reasons. First, in the calculations of estimated take, 50 percent has been added in the form of operational survey days (equivalent to adding 50 percent to the line km to be surveyed) to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of Level A takes. However, the extent to

which marine mammals would move away from the sound source is difficult to quantify and is therefore not accounted for in the take estimates shown in 11, 12, 13 and 14.

For some marine mammal species, we authorize a different number of incidental takes than the number of incidental takes requested by L–DEO (see Tables 18, 19 and 20 in the IHA application for requested take numbers). For instance, for several species, L–DEO increased the take request from the calculated take number to 1 percent of the estimated population size. We do not believe it is likely that 1 percent of the estimated population size of those species will be taken by L–DEO’s planned surveys, therefore we do not authorize the take numbers requested by L–DEO in their IHA application (LGL, 2017). However, in recognition of the uncertainties in the density estimates used to estimate take as described above, we believe it is reasonable to assume that actual takes may exceed numbers of takes calculated based on available density estimates; therefore, we have increased take estimates for all marine mammal species by an additional 25 percent, to account for the fact that density estimates used to estimate take may be underestimates of

actual densities of marine mammals in the survey area. Additionally, L–DEO requested authorization for 10 takes of Hector’s dolphins during the North Island 2-D survey (LGL, 2017). However, we do not authorize any takes of Hector’s dolphins or Maui dolphins during North Island surveys. We believe the likelihood of the planned North Island 2-D survey encountering a Hector’s dolphin or Maui dolphin is so low as to be discountable. As described above, the North Island subpopulation of Hector’s dolphin (aka Maui dolphin) is very unlikely to be encountered during either planned North Island survey due to the very low estimated abundance of the subpopulation and due to the geographic isolation of the subpopulation (currently limited to the west coast of the North Island, whereas all planned North Island surveys would occur on the eastern side of the island). As such, we do not authorize any takes of Hector’s dolphins or Maui dolphins during L–DEO’s planned North Island surveys.

#### 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.

L-DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L-DEO proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Vessel-based passive acoustic monitoring;

(3) Establishment of an exclusion zone;

(4) Power down procedures;

(5) Shutdown procedures;

(6) Ramp-up procedures; and

(7) Vessel strike avoidance measures.

In addition to the mitigation measures proposed by L-DEO, NMFS has incorporated the following additional measures:

(1) Shutdown upon observation of a large whale with calf at any distance;

(2) Shutdown upon observation of a Hector's dolphin or Maui dolphin (during North Island 2-D and North Island 3-D surveys only) at any distance;

(3) Shutdown upon observation of an aggregation (6 or more) of large whales of any species at any distance;

(4) Shutdown upon any observation (visual or acoustic) of a beaked whale or *Kogia* spp. at any distance; and

(5) Shutdown upon acoustic detection of a sperm whale (with certain exceptions) at any distance.

As described above, measures (3), (4) and (5) incorporated by NMFS above were added to the suite of mitigation measures after we published the notice of the proposed IHA in the **Federal Register** (82 FR 45116; September 27, 2017), in response to comments received from the Commission.

#### *Vessel-Based Visual Mitigation Monitoring*

Protected Species Observer (PSO) observations will take place during all daytime airgun operations and nighttime start ups (if applicable) of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated Exclusion Zones (as described below). PSOs will also watch for marine mammals near the vessel for at least 30 minutes prior to the planned start of airgun operations. PSOs will monitor the entire extent of the modeled Level B harassment zone (Table 3) (or, as far as they are able to see, if they cannot see to the extent of the estimated Level B harassment zone). Observations will also be made during daytime periods when the *Langseth* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods.

During seismic operations, a minimum of four visual PSOs will be based aboard the *Langseth*. PSOs will be appointed by L-DEO, with NMFS' approval. During the majority of seismic

operations, two PSOs will monitor for marine mammals around the seismic vessel. Use of two simultaneous observers increases the effectiveness of detecting marine mammals around the source vessel. However, during meal times, only one PSO may be on duty. PSO(s) will be on duty in shifts of duration no longer than 4 hours. Other crew will also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction in detecting marine mammals and implementing mitigation requirements. The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, PSOs will have a good view around the entire vessel. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes will be provided to NMFS for approval. At least two PSOs must have a minimum of 90 days at-sea experience working as PSOs during a high energy seismic survey, with no more than eighteen months elapsed since the conclusion of the at-sea experience. One "experienced" visual PSO will be designated as the lead for the entire protected species observation team. The lead will coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. The lead PSO will devise the duty schedule such that "experienced" PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience, to the maximum extent practicable.

The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience

comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO. The PSO should demonstrate good standing and consistently good performance of PSO duties.

#### *Vessel-Based Passive Acoustic Mitigation Monitoring*

Passive acoustic monitoring (PAM) will take place to complement the visual monitoring program and to inform mitigation measures. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to inform mitigation measures and to alert visual observers (if on duty) when vocalizing cetaceans are detected. PAM is only useful when marine mammals vocalize, but it can be effective either by day or by night and does not depend on good visibility. PAM will be monitored in real time so that visual observers can be alerted when marine mammals are detected acoustically.

The PAM system consists of hardware (*i.e.*, hydrophones) and software. The “wet end” of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. A deck cable will connect the tow cable to the electronics unit on board where the acoustic station, signal conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the software.

At least one acoustic PSO (in addition to the four visual PSOs) will be on board. The towed hydrophones will be monitored 24 hours per day (either by the acoustic PSO or by a visual PSO trained in the PAM system if the acoustic PSO is on break) while at the seismic survey area during airgun operations, and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to the array or back-up systems during operations. One PSO will monitor the acoustic detection system at any one time, in shifts no longer than six hours, by listening to the signals via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans.

When a vocalization is detected, the acoustic PSO will take necessary action depending on the species and location of the animal detected. If the species and/or location of the animal(s) warrants immediate shutdown of the array, the acoustic PSO will contact the vessel operator immediately to call for a shutdown (see the section on Mitigation, below, for scenarios that require shutdown based on acoustic detection). If the species and/or location of the animal(s) does not warrant immediate shutdown, the acoustic PSO will contact visual PSOs immediately, to alert them to the presence of marine mammals (if they have not already been detected visually), in order to facilitate a power down or shutdown, if required. The information regarding the marine mammal acoustic detection will be entered into a database.

In summary, a typical daytime cruise will have scheduled two observers (visual) on duty from the observation platform, and an acoustic observer on the passive acoustic monitoring system.

#### *Exclusion Zone and Buffer Zone*

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.*, auditory injury, disruption of critical behaviors. The PSOs will establish a minimum EZ with a 500 m radius for the 36 airgun array and the 18 airgun array. The 500 m EZ will be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source will be powered down (see Power Down Procedures below). In addition to the 500 m EZ for the full arrays, a 100 m exclusion zone will be established for the single 40 in<sup>3</sup> airgun. With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone the acoustic source will be shut down entirely (see Shutdown Procedures below). Additionally, power down of the full arrays will last no more than 30 minutes maximum at any given time; thus the arrays will be shut down entirely if, after 30 minutes of the array being powered down, a marine mammal remains inside the 500 m EZ (with the exception of spectacled porpoise and bottlenose, hourglass, and Hector’s dolphins, as described above).

In their IHA application, L-DEO proposed to establish EZs based upon modeled radial distances to auditory

injury zones (*e.g.*, power down would occur when a marine mammal entered or appeared likely to enter the zone(s) within which auditory injury is expected to occur based on modeling) (Tables 6, 7, 8). However, we instead require the 500 m EZ as described above. The 500 m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding peak pressure injury criteria for all cetacean hearing groups, while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500-m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

An appropriate EZ based on cumulative sound exposure level ( $SEL_{cum}$ ) criteria would be dependent on the animal’s applied hearing range and how that overlaps with the frequencies produced by the sound source of interest (*i.e.*, via marine mammal auditory weighting functions) (NMFS, 2016), and may be larger in some cases than the zones calculated on the basis of the peak pressure thresholds (and larger than 500 m) depending on the species in question and the characteristics of the specific airgun array. In particular, the EZ radii would be larger for low-frequency cetaceans, because their most susceptible hearing range overlaps the low frequencies produced by airguns, but the zones would remain very small for mid-frequency cetaceans (*i.e.*, including the “small delphinoids” described below), whose range of best hearing largely does not overlap with frequencies produced by airguns.

Use of monitoring and shutdown or power-down measures within defined exclusion zone distances is inherently an essentially instantaneous proposition—a rule or set of rules that requires mitigation action upon detection of an animal. This indicates that definition of an exclusion zone on the basis of cumulative sound exposure level thresholds, which require that an animal accumulate some level of sound energy exposure over some period of time (*e.g.*, 24 hours), has questionable relevance as a standard protocol. A PSO aboard a mobile source will typically have no ability to monitor an animal’s position relative to the acoustic source

over relevant time periods for purposes of understanding whether auditory injury is likely to occur on the basis of cumulative sound exposure and, therefore, whether action should be taken to avoid such potential.

Cumulative SEL thresholds are more relevant for purposes of modeling the potential for auditory injury than they are for dictating real-time mitigation, though they can be informative (especially in a relative sense). We recognize the importance of the accumulation of sound energy to an understanding of the potential for auditory injury and that it is likely that, at least for low-frequency cetaceans, some potential auditory injury is likely impossible to mitigate and should be considered for authorization.

In summary, our intent in prescribing a standard exclusion zone distance is to (1) encompass zones for most species within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.*, panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the exclusion zone; and (4) to define a distance within which detection probabilities are reasonably high for most species under typical conditions.

Our use of 500 m as the EZ is a reasonable combination of factors. This zone is expected to contain all potential auditory injury for all marine mammals (high-frequency, mid-frequency and low-frequency cetacean functional hearing groups and otariid and phocid pinnipeds) as assessed against peak pressure thresholds (NMFS, 2016) (Tables 6, 7, 8). It is also expected to contain all potential auditory injury for high-frequency and mid-frequency cetaceans as well as otariid and phocid pinnipeds as assessed against SEL<sub>cum</sub> thresholds (NMFS, 2016) (Tables 6, 7, 8). It has proven to be practicable through past implementation in seismic surveys conducted for the oil and gas industry in the Gulf of Mexico (as regulated by the Bureau of Ocean Energy Management (BOEM) pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1356)). In summary, a practicable criterion, such as the EZs described above, has the advantage of simplicity while still providing in most cases a zone larger than relevant auditory injury zones, given realistic movement of source and receiver.

The PSOs will also establish and monitor a 500 m buffer zone (*i.e.*, 500

m in addition to the 500 m EZ). During operation of the airgun arrays, occurrence of marine mammals within the 500 m buffer zone (but outside the 500 m EZ) will be communicated to the vessel operator to prepare for potential power down or shutdown of the acoustic source. The buffer zone is discussed further under Ramp Up Procedures below. PSOs will also monitor the entire extent of the estimated Level B harassment zone (Table 3) (or, as far as they are able to see, if they cannot see to the extent of the estimated Level B harassment zone).

#### Power Down Procedures

A power down involves decreasing the number of airguns in use such that the smallest single element of the array is in operation (*i.e.*, one 40-in<sup>3</sup> airgun), with the result that the radius of the mitigation zone is decreased to the extent that marine mammals are no longer in, or about to enter, the 500 m EZ. The continued operation of one 40-in<sup>3</sup> airgun is intended to alert marine mammals to the presence of the seismic vessel in the area, and to allow them to leave the area of the seismic vessel if they choose. In contrast, a shutdown occurs when all airgun activity is suspended (shutdown procedures are discussed below). If a marine mammal is detected outside the 500 m EZ but appears likely to enter the 500 m EZ, the array will be powered down before the animal is within the 500 m EZ. Likewise, if a mammal is already within the 500 m EZ when first detected, the array will be powered down immediately. During a power down of the airgun array, the 40-in<sup>3</sup> airgun will be operated.

Following a power down, airgun activity will not resume until the marine mammal has cleared the 500 m EZ. The animal will be considered to have cleared the 500 m EZ if the following conditions have been met:

- It is visually observed to have departed the 500 m EZ; or
- it has not been seen within the 500 m EZ for 15 min in the case of small odontocetes and pinnipeds; or
- it has not been seen within the 500 m EZ for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

This power down requirement will be in place for all marine mammals, with the exception of certain small delphinoids under certain circumstances. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes

of interacting with the vessel and/or airgun array (*e.g.*, bow riding). This exception to the power down requirement applies solely to specific species of small dolphins: Short-beaked common dolphin, dusky dolphin, and southern right whale dolphin. If there is uncertainty regarding identification (*i.e.*, whether the observed animal(s) belongs to the species described above), the power down or shutdown must be implemented. Note that bottlenose, hourglass, and Hector's dolphins and spectacled porpoise are not included in the power down/shutdown exception.

We include this small delphinoid exception because power-down/shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described below, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.*, delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.*, permanent threshold shift). Please see Potential Effects of the Specified Activity on Marine Mammals in the **Federal Register** notice of the proposed IHA (82 FR 45116; September 27, 2017) for further discussion of sound metrics and thresholds and marine mammal hearing. Bottlenose dolphins are excluded from the power down waiver due to concerns from the New Zealand Department of Conservation, while hourglass, spectacled, and Hector's dolphins are excluded from the power down waiver due to their functional hearing range (they are classified as high frequency cetaceans which would make them more susceptible to harassment or possible injury as a result of exposure to airgun sounds).

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.*, Barkaszi *et al.*, 2012). The potential for increased shutdowns resulting from such a measure would require the *Langseth* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in

the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (e.g., large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a power-down/shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

A power down could occur for no more than 30 minutes maximum at any given time. If, after 30 minutes of the array being powered down, marine mammals had not cleared the 500 m EZ (as described above), a shutdown of the array will be implemented (see Shut Down Procedures, below). Power down is only allowed in response to the presence of marine mammals within the designated EZ. Thus, the single 40-in<sup>3</sup> airgun, which will be operated during power downs, may not be operated continuously throughout the night or during transits from one line to another.

#### Shut Down Procedures

The single 40-in<sup>3</sup> operating airgun will be shut down if a marine mammal is seen within or approaching the 100 m EZ for the single 40-in<sup>3</sup> airgun. Shutdown will be implemented if (1) an animal enters the 100 m EZ of the single 40-in<sup>3</sup> airgun after a power down has been initiated, or (2) an animal is initially seen within the 100 m EZ of the single 40-in<sup>3</sup> airgun when more than one airgun (typically the full array) is operating. Airgun activity will not resume until the marine mammal has cleared the 500 m EZ. Criteria for judging that the animal has cleared the EZ will be as described above. A shutdown of the array will be implemented if, after 30 minutes of the array being powered down, marine mammals have not cleared the 500 m EZ (as described above).

The shutdown requirement, like the power down requirement, is waived for dolphins of the following species: Short-beaked common dolphin, dusky dolphin and southern right whale dolphin. If there is uncertainty regarding identification (i.e., whether the observed animal(s) belongs to the

species described above), the shutdown will be implemented.

**Other Shutdown Requirements**—In addition to the shutdown requirement described above, NMFS also requires shutdown of the acoustic source in the event of certain other observations regardless of the defined exclusion zone. While visual PSOs should focus observational effort within the vicinity of the acoustic source and vessel (i.e., approximately 1 km radius), this does not preclude them from periodic scanning of the remainder of the visible area, and there is no reason to believe that such periodic scans by professional PSOs would hamper their ability to maintain observation of areas closer to the source and vessel. These circumstances include:

- Upon observation of a large whale (i.e., sperm whale or any baleen whale) with calf at any distance, with “calf” defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult. Groups of whales are likely to be more susceptible to disturbance when calves are present (e.g., Bauer *et al.*, 1993), and disturbance of cow-calf pairs could potentially result in separation of vulnerable calves from adults. McCauley *et al.* (2000a) found that groups of humpback whale females with calves consistently avoided a single operating airgun, while male humpbacks were attracted to it, concluding that cow-calf pairs are more likely to exhibit avoidance responses to unfamiliar sounds and that such responses should be a focus of management. Behavioral disturbance has been implicated in mother-calf separations for odontocete species as well (Noren and Edwards, 2007; Wade *et al.*, 2012). Separation, if it occurred, could be exacerbated by airgun signals masking communication between adults and the separated calf (Videsen *et al.*, 2017). Absent separation, airgun signals can disrupt or mask vocalizations essential to mother-calf interactions. Reductions in the probability of calf survival for gray whales have been linked to airgun surveys in Russia (Cooke *et al.*, 2016).

- Upon acoustic detection of a sperm whale (except in cases where the location of an acoustically detected sperm whale can be definitively localized as outside the 500 m EZ). Sperm whales are not necessarily expected to display physical avoidance of sound sources (e.g., Madsen *et al.*, 2002a; Jochens *et al.*, 2008; Winsor *et al.*, 2017). Although Winsor *et al.* (2017) report that distances and orientations between tagged whales and active airgun arrays appeared to be randomly

distributed with no evidence of horizontal avoidance, it must be noted that their study was to some degree precipitated by an earlier observation of significantly decreased sperm whale density in the presence of airgun surveys (Mate *et al.*, 1994). However, effects on vocal behavior are common (e.g., Watkins and Schevill, 1975; Watkins *et al.*, 1985). The sperm whale’s primary means of locating prey is echolocation (Miller *et al.*, 2004), and multiple studies have shown that noise can disrupt feeding behavior and/or significantly reduce foraging success for sperm whales at relatively low levels of exposure (e.g., Miller *et al.*, 2009, 2012; Isojunno *et al.*, 2016; Sivle *et al.*, 2012; Cure *et al.*, 2016). Effects on energy intake with no immediate compensation, as is suggested by disruption of foraging behavior without corollary movements to new locations, would be expected to result in bioenergetics consequences to individual whales.

We also considered requirement of shutdown upon visual detection of sperm whales at any distance. Here, we assume that acoustic detections of sperm whales would most likely be representative of the foraging behavior we intend to minimize disruption of, while visual observations of sperm whales would represent resting between bouts of such behavior. Occurrence of resting sperm whales at distances beyond the exclusion zone may not indicate a need to implement shutdown. If the location of an acoustically detected sperm whale can be definitively localized by the PAM operator as outside the 500 m EZ, then the requirement to shutdown the array is waived. If there is any uncertainty as to whether or not an acoustically detected sperm whale is within the 500 m EZ, shutdown must be implemented.

- Upon any observation (visual or acoustic) of a beaked whale or *Kogia* spp. These species are behaviorally sensitive deep divers and it is possible that disturbance could provoke a severe behavioral response leading to injury (e.g., Wursig *et al.*, 1998; Cox *et al.*, 2006). Unlike the sperm whale, we recognize that there are generally low detection probabilities for beaked whales and *Kogia* spp., meaning that many animals of these species may go undetected. Barlow (1999) estimates such probabilities at 0.23 to 0.45 for Cuvier’s and Mesoplodont beaked whales, respectively. However, Barlow and Gisiner (2006) predict a roughly 24–48 percent reduction in the probability of detecting beaked whales during seismic mitigation monitoring efforts as compared with typical research survey

efforts, and Moore and Barlow (2013) noted a decrease in  $g(0)$  for Cuvier's beaked whales from 0.23 at BSS 0 (calm) to 0.024 at BSS 5. Similar detection probabilities have been noted for *Kogia* spp., though they typically travel in smaller groups and are less vocal, thus making detection more difficult (Barlow and Forney, 2007). Because it is likely that only a small proportion of beaked whales and *Kogia* spp. potentially affected by the planned surveys would actually be detected, it is important to avoid potential impacts when possible.

- Upon visual observation of an aggregation (6 or more) of large whales of any species (*i.e.*, sperm whale or any baleen whale) (*e.g.*, feeding, socializing, etc.). Under these circumstances, we assume that the animals are engaged in some important behavior (*e.g.*, feeding, socializing) that should not be disturbed. By convention, we define an aggregation as six or more animals.

- Upon observation (visual or acoustic) of a Hector's dolphin or Maui dolphin (during North Island and South Island surveys) at any distance. As described above, the Maui dolphin is considered one of the rarest dolphins in the world with a population size estimated at just 63 individuals (Baker *et al.* 2016). It has undergone a marked reduction in range (Dawson *et al.* 2001; Slooten *et al.* 2005), and currently faces a high risk of extinction (Manning and Grantz, 2016). The shutdown requirement for Hector's/Maui dolphin during North Island surveys is designed to avoid any potential for exposure of a Maui dolphin to seismic airgun sounds. Maui dolphins are not expected to occur in the planned survey areas off the North Island based on their current range. However, as described above, there have been occasional sightings of Hector's dolphins off the east coast of the North Island though it is unclear whether those individuals may have originated from the South Island Hector's dolphin populations (Baker 1978, Russell 1999, Ferreira and Roberts 2003, Slooten *et al.* 2005, DuFresne 2010, Berkenbusch *et al.* 2013; Torres *et al.* 2013; Patiño-Pérez 2015; NZDOC 2017). While we have determined the likelihood of L-DEO's planned North Island surveys encountering a Hector's dolphin or Maui dolphin is extremely low, we nonetheless include this measure to further minimize the already extremely unlikely potential for exposure of a Maui dolphin to airgun sounds. Also as described above, Hector's dolphins have relatively small home ranges and high site fidelity and a genetically distinct and localized population occurs in Te Waewae Bay (Mackenzie and Clement, 2014). Due to

the limited range and high site fidelity of the population of Hector's dolphin that occurs in Te Waewae Bay and the proximity of the planned South Island 2-D survey with Te Waewae Bay we have included this requirement to protect the South Island Hector's dolphin. The requirement to shut down on acoustic detection applies when the acoustic detection can be positively identified as originating from a Hector's dolphin.

- In the event of a shutdown due to visual observation of a beaked whale, *Kogia* spp., an aggregation of large whales, or large whale with calf, ramp-up procedures will not be initiated until the animal(s) that triggered the shutdown has not been seen at any distance for 30 minutes. In the event of a shutdown due to visual or confirmed acoustic detection of a Hector's or Maui dolphin, ramp-up procedures will not be initiated until the Hector's/Maui dolphin has not been visually or acoustically detected at any distance for 15 minutes. In the event of a shutdown due to acoustic detection of a sperm whale, *Kogia* spp., or beaked whale, ramp-up procedures will not be initiated until the animal(s) that triggered the shutdown has not been detected acoustically for 30 minutes.

#### Ramp-Up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a power down or shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. The ramp-up procedure involves a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved. Ramp-up is required after the array is powered down or shut down due to mitigation. If the airgun array has been shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual and acoustic observation and no visual detections of any marine mammal have occurred within the buffer zone and no acoustic detections have occurred. This is the only scenario under which ramp up is not required.

Ramp-up will begin by activating a single airgun of the smallest volume in the array and will continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration.

If airguns have been powered down or shut down due to PSO detection of a

marine mammal within or approaching the 500 m EZ, ramp-up will not be initiated until all marine mammals have cleared the EZ, during the day or night. Visual and acoustic PSOs are required to monitor during ramp-up. If a marine mammal were detected by visual PSOs within or approaching the 500 m EZ during ramp-up, a power down (or shut down if appropriate) will be implemented as though the full array were operational. Criteria for clearing the EZ will be as described above.

Thirty minutes of pre-clearance observation of the 500 m EZ and 500 m buffer zone are required prior to ramp-up following any extended deactivation of the array (*i.e.*, if the array were shut down during transit from one line to another). This 30 minute pre-clearance period may occur during any vessel activity (*i.e.*, transit). If a marine mammal is observed within or approaching the 500 m EZ during this pre-clearance period, ramp-up will not be initiated until all marine mammals have cleared the EZ. Criteria for clearing the EZ will be as described above.

Ramp-up will be planned to occur during periods of good visibility when possible. However, ramp-up is allowed at night and during poor visibility if the 500 m EZ and 500 m buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up and if acoustic monitoring has occurred for 30 minutes prior to ramp-up with no acoustic detections during that period. Ramp-up of the array may not occur at night or during poor visibility if the PAM system is not functional.

The operator is required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. The operator must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the operator is required to communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up.

L-DEO proposed that ramp up would not occur following an extended power down (LGL 2017). However, as we do not allow extended power downs during the planned surveys, we also do not include this as a mitigation measure; instead, ramp up is required after any power down or shutdown of the array (with the one exception as described above). L-DEO also proposed that ramp up would occur when the airgun array begins operating after 8 minutes without

airgun operations (LGL 2017). However, we instead include the criteria for ramp-up as described above.

#### *Vessel Strike Avoidance*

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. We note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The vessel strike avoidance measures include the following: Vessel operator and crew will maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel will monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone will be either third-party observers or crew members, but crew members responsible for these duties will be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures will be followed during surveys and while in transit.

The vessel will maintain a minimum separation distance of 100 m from large whales (*i.e.*, baleen whales and sperm whales). If a large whale is within 100 m of the vessel the vessel will reduce speed and shift the engine to neutral, and will not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel will not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. The vessel will maintain a minimum separation distance of 50 m from all other marine mammals (with the exception of short-beaked common dolphins, dusky dolphins and southern right whale dolphins that approach the vessel, as described above). If an animal is encountered during transit, the vessel will attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds will be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near the vessel.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their

habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

#### **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 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.

L-DEO submitted a marine mammal monitoring and reporting plan in section XIII of their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as

monitoring of the EZ to inform potential power downs or shutdowns of the airgun array, are described above.

L-DEO's monitoring and reporting plan includes the following measures:

#### *Vessel-Based Visual Monitoring*

As described above, PSO observations will take place during daytime airgun operations and nighttime start ups (if applicable) of the airguns. During seismic operations, at least four visual PSOs will be based aboard the *Langseth*. PSOs will be appointed by L-DEO with NMFS approval. During the majority of seismic operations, two PSOs will monitor for marine mammals around the seismic vessel. Use of two simultaneous observers increases the effectiveness of detecting animals around the source vessel. However, during meal times, only one PSO may be on duty. PSOs will be on duty in shifts of duration no longer than 4 hours. Other crew will also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs will scan the area around the vessel systematically with reticle binoculars (*e.g.*, 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye.

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shutdown of airguns when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.*, none, avoidance, approach, paralleling, etc.), and behavioral pace; and
2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and power downs or shutdowns will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow

initial summaries of data to be prepared during and shortly after the field program and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown);
2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;
3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;
4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and
5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

*Vessel-Based Passive Acoustic Monitoring*

As described above, the acoustic PSO will monitor the PAM system in real time. When a vocalization is detected, the acoustic PSO will take necessary action depending on the species and location of the animal detected, whether immediately calling for a shutdown or immediately contacting visual PSOs to alert them to the presence of marine mammals in order to facilitate a power down or shutdown, if required.

PAM will also take place to complement the visual monitoring program as described above. Please see the Mitigation section above for a description of the PAM system and the acoustic PSO's duties. The acoustic PSO

will record data collected via the PAM system, including the following: An acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acoustic detections will also be recorded for further analysis.

*Reporting*

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected.

**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' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 2, given that NMFS expects the anticipated effects of the planned seismic surveys to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis. As described above, we authorize only the takes estimated to occur outside of New Zealand territorial sea (Tables 10, 11, 12 and 13); however, for the purposes of our negligible impact analysis and determination, we consider the total impacts to the affected marine mammal populations resulting from the specified activity, including takes that are expected to occur within the territorial sea (Table 14).

**TABLE 14—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS DURING PORTIONS OF L-DEO'S NORTH ISLAND 2-D, NORTH ISLAND 3-D, AND SOUTH ISLAND 2-D SURVEYS THAT OCCUR IN THE NEW ZEALAND TERRITORIAL SEA**

Species	Estimated Level A takes <sup>1</sup>	Estimated Level B takes <sup>1</sup>	Total estimated Level A and Level B takes <sup>1</sup>
Southern right whale .....	0	25	25
Pygmy right whale .....	0	11	11
Humpback whale .....	0	24	24
Bryde's whale .....	0	14	14
Common minke whale .....	0	16	16
Antarctic minke whale .....	0	16	16
Sei whale .....	0	16	16

TABLE 14—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS DURING PORTIONS OF L–DEO’S NORTH ISLAND 2-D, NORTH ISLAND 3-D, AND SOUTH ISLAND 2-D SURVEYS THAT OCCUR IN THE NEW ZEALAND TERRITORIAL SEA—Continued

Species	Estimated Level A takes <sup>1</sup>	Estimated Level B takes <sup>1</sup>	Total estimated Level A and Level B takes <sup>1</sup>
Fin whale	0	25	25
Blue whale	0	6	6
Sperm whale	0	278	278
Cuvier’s beaked whale	0	251	251
Arnoux’s beaked whale	0	251	251
Southern bottlenose whale	0	169	169
Shepard’s beaked whale	0	169	169
Hector’s beaked whale	0	169	169
True’s beaked whale	0	85	85
Gray’s beaked whale	0	334	334
Andrew’s beaked whale	0	169	169
Strap-toothed whale	0	251	251
Blainville’s beaked whale	0	85	85
Spade-toothed whale	0	85	85
Bottlenose dolphin	0	486	486
Short-beaked common dolphin	0	918	918
Dusky dolphin	0	518	518
Southern right-whale dolphin	0	291	291
Risso’s dolphin	0	195	195
False killer whale	0	291	291
Killer whale	0	184	184
Long-finned pilot whale	0	789	789
Short-finned pilot whale	0	368	368
Pygmy sperm whale	1	166	167
Hourglass dolphin	3	394	397
Hector’s dolphin	0	1	1
Spectacled porpoise	0	21	21
New Zealand fur seal	0	2141	2141
New Zealand sea lion	0	98	98
Southern elephant seal	0	69	69
Leopard seal	0	35	35

**Note:** NMFS does not authorize the estimated takes shown in the territorial sea.

<sup>1</sup> Includes additional 25 percent contingency for potential additional survey operations and additional 25 percent contingency to account for uncertainties in density estimates.

NMFS does not anticipate that serious injury or mortality will occur as a result of L–DEO’s planned surveys, even in the absence of mitigation. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We authorize a limited number of instances of Level A harassment of 21 marine mammal species (Tables 10, 11, 12 and 13). However, we believe that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS, not severe hearing impairment, and would be unlikely to affect the fitness of any individuals, because of the constant movement of both the *Langseth* and of the marine mammals in the project area, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.*, since the duration of exposure to loud sounds will be relatively short). Also, as described above, we expect that

marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Langseth’s* approach due to the vessel’s relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007).

Potential impacts to marine mammal habitat are discussed in the **Federal Register** notice of the proposed IHA (82 FR 45116; September 27, 2017) and are summarized below. Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less

likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.*, 1995). Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no mating or calving areas known to be biologically important to marine mammals within the proposed project area.

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project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no mating or calving areas known to be biologically important to marine mammals within the planned project area.

As described above, the take estimates shown in Tables 10, 11, 12 and 13 have been revised slightly since we published the notice of the proposed IHA in the **Federal Register** (82 FR 45116; September 27, 2017). We have fully considered these revised take estimates in our negligible impact analysis. Additionally, the acoustic “footprint” of the planned surveys is small relative to the ranges of the marine mammals potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the planned survey area.

The mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via power downs and/or shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the mitigation will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of the mitigation.

The ESA-listed marine mammal species under our jurisdiction that are likely to be taken by the planned surveys include the southern right, sei, fin, blue, and sperm whale (listed as endangered) and the South Island Hector’s dolphin (listed as threatened). We authorize a very limited amount of take for these species (Tables 10, 11, 12 and 13), relative to their population sizes, therefore we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during the planned surveys are not listed as threatened or endangered

under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; and of the non-listed marine mammals for which we authorize take, none are considered “depleted” or “strategic” by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species and stocks due to L-DEO’s planned survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The anticipated impacts of the planned activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of PTS that may occur are expected to be very small in number (Tables 10, 11, 12 and 13). Instances of PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned surveys to avoid exposure to sounds from the activity;
- The planned project area does not contain known areas of significance for mating or calving;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the planned surveys would be temporary and spatially limited; and
- The mitigation measures, including visual and acoustic monitoring, power downs, and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine

mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

### Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers; 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. Tables 10, 11, 12 and 13 provide numbers of take by Level A harassment and Level B harassment authorized. These are the numbers we use for purposes of the small numbers analysis.

The numbers of marine mammals that we authorize to be taken would be considered small relative to the relevant populations (less than 12 percent for all species) for the species for which abundance estimates are available. No known current worldwide or regional population estimates are available for ten species under NMFS’ jurisdiction that could be incidentally taken as a result of the planned surveys: the pygmy right whale; pygmy sperm whale; True’s beaked whale; short-finned pilot whale; false killer whale; bottlenose dolphin; short-beaked common dolphin; southern right whale dolphin; Risso’s dolphin; and spectacled porpoise.

NMFS has reviewed the geographic distributions and habitat preferences of these species in determining whether the numbers of takes authorized herein are likely to represent small numbers. Pygmy right whales have a circumglobal distribution and occur throughout coastal and oceanic waters in the Southern Hemisphere (between 30 to 55° South) (Jefferson *et al.*, 2008). Pygmy sperm whales occur in deep waters on the outer continental shelf and slope in tropical to temperate waters of the Atlantic, Indian, and Pacific Oceans. True’s beaked whales occur in the Southern hemisphere from the western Atlantic Ocean to the Indian Ocean to the waters of southern Australia and possibly New Zealand (Jefferson *et al.*, 2008). False killer whales generally occur in deep offshore tropical to temperate waters (between

50° North to 50° South) of the Atlantic, Indian, and Pacific Oceans (Jefferson *et al.*, 2008). Southern right whale dolphins have a circumpolar distribution and generally occur in deep temperate to sub-Antarctic waters in the Southern Hemisphere (between 30 to 65° South) (Jefferson *et al.*, 2008). Short-finned pilot whales are found in warm temperate to tropical waters throughout the world, generally in deep offshore areas (Olson and Reilly, 2002). Bottlenose dolphins are distributed worldwide through tropical and temperate inshore, coastal, shelf, and oceanic waters (Leatherwood and Reeves 1990, Wells and Scott 1999, Reynolds *et al.* 2000). Spectacled porpoises are believed to have a range that is circumpolar in the sub-Antarctic zone (with water temperatures of at least 1–10 °C) (Goodall 2002). The Risso's dolphin is a widely-distributed species, inhabiting primarily deep waters of the continental slope and outer shelf (especially with steep bottom topography), from the tropics through the temperate regions in both hemispheres (Kruse *et al.* 1999). The short-beaked common dolphin is an oceanic species that is widely distributed in tropical to cool temperate waters of the Atlantic and Pacific Oceans (Perrin 2002), from nearshore waters to thousands of kilometers offshore.

Based on the broad spatial distributions and habitat preferences of these species relative to the areas where the planned surveys are planned to occur, NMFS concludes that the

authorized take of these species likely represent small numbers relative to the affected species' overall population sizes, though we are unable to quantify the take numbers as a percentage of population.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species.

#### **Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

#### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we

propose to authorize take for endangered or threatened species.

The NMFS Permits and Conservation Division is authorizing the incidental take of six species of marine mammals which are listed under the ESA (the southern right, sei, fin, blue, and sperm whale and South Island Hector's dolphin). Under section 7 of the ESA, we initiated consultation with the NMFS OPR Interagency Cooperation Division for the issuance of this IHA. In October, 2017, the NMFS OPR Interagency Cooperation Division issued a Biological Opinion with an incidental take statement, which concluded that the issuance of the IHA was not likely to jeopardize the continued existence of the southern right, sei, fin, blue, and sperm whale and South Island Hector's dolphin. The Biological Opinion also concluded that the issuance of the IHA would not destroy or adversely modify designated critical habitat for these species.

#### **Authorization**

NMFS has issued an IHA to the L-DEO for the potential harassment of small numbers of 38 marine mammal species incidental to marine geophysical surveys in the southwest Pacific Ocean, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: November 21, 2017.

#### **Donna Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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