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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0033; Special Conditions No. 25–670–SC]

Special Conditions: Bombardier Aerospace, Model BD–700–2A12 and BD–700–2A13 Airplanes; Limit Engine Torque Loads

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier (Bombardier) Inc. Models BD–700–2A12 and BD–700–2A13 airplanes. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is the engine torque-load limit imposed by sudden engine stoppage due to malfunction or structural failure. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Bombardier on May 12, 2017. Send your comments on or before June 26, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0033 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
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Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1119; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public notice and comment period in several prior instances, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above. It is further unnecessary to delay the effective date for the reasons previously stated.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On May 30, 2012, Bombardier applied for an amendment to Type Certificate No. T00003NY to include the new Model BD–700–2A12 and BD–700–2A13 airplanes. These airplanes are derivatives of the Model BD–700 series of airplanes and are marketed as the Bombardier Global 7000 (Model BD–700–2A12) and Global 8000 (Model BD–700–2A13). These airplanes are twin-engine, transport-category, executive-interior business jets. The maximum passenger capacity is 19 and the maximum takeoff weights are 106,250 lbs. (Model BD–700–2A12) and 104,800 lbs. (Model BD–700–2A13).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Bombardier must show that the Model BD–700–2A12 and BD–700–2A13 airplanes meet the applicable provisions of the regulations listed in Type Certificate No. T00003NY, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model BD–700–2A12 and BD–700–2A13 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to

include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model BD–700–2A12 and BD–700–2A13 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes will incorporate a novel or unusual design feature associated with engine-seizure requirements due, in part, to large bypass fans capable of producing much larger and more complex dynamic loads than would other bypass fans.

Discussion

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport-category airplanes since 1957. In the past, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure, torque static loads.

It is evident from service history that the engine-failure events that tend to cause the most severe loads are fan-blade failures. These events occur much less frequently than the typical ''limit'' load condition.

Regulatory authorities and industry have developed a standardized requirement in the Aviation Rulemaking Advisory Committee (ARAC) forum (Aviation Rulemaking Advisory Committee; Loads and Dynamics Harmonization Working Group [58 FR 13819]). The technical aspects of this requirement have been agreed upon, and the ARAC Loads and Dynamics Harmonization Working Group has accepted them. These special conditions reflect the ARAC recommendation. The ARAC recommendation includes corresponding advisory material, which is considered an acceptable means of compliance to these special conditions.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model BD–700–2A12 and BD–700–2A13 airplanes. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only one novel or unusual design feature on Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes. It is not a rule of general applicability and affects only the applicant who applied to FAA for approval of this feature on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model BD–700–2A12 and BD–700–2A13 airplanes.

In lieu of § 25.361(b) the following special conditions apply:

1. For turbine engine installations, the engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden engine deceleration due to a malfunction that could result in a temporary loss of power or thrust, and

b. The maximum acceleration of the engine.

2. For auxiliary power unit (APU) installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden APU deceleration due to malfunction or structural failure; and

b. The maximum acceleration of the APU.

3. For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

a. The loss of any fan, compressor, or turbine blade; and separately

b. Where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3(a) and 3(b) of these special conditions are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons, and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Any permanent deformation that results from the conditions specified in paragraph 3 must not prevent continued safe flight and landing.

Issued in Renton, Washington, on April 27, 2017.

Paul Bernado,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09663 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0358; Special Conditions No. 25–659–SC]

Special Conditions: Bombardier Aerospace Inc., Model BD–100–1A10 Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Bombardier Aerospace Inc. (Bombardier) Model BD–100–1A10 airplane. Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level

of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Bombardier on May 12, 2017. We must receive your comments by June 26, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0358 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
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Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in most makes and models of transport category airplanes. We intend to require special conditions for certification projects involving non-rechargeable lithium battery installations to address certain safety issues until we can revise the airworthiness requirements. Applying special conditions to these installations across the range of transport category airplanes will ensure regulatory consistency.

Typically, the FAA issues special conditions after receiving an application for type certificate approval of a novel or unusual design feature. However, the FAA has found that the presence of non-rechargeable lithium batteries in certification projects is not always immediately identifiable, since the battery itself may not be the focus of the project. Meanwhile, the inclusion of these batteries has become virtually ubiquitous on in-production transport category airplanes, which shows that there will be a need for these special conditions. Also, delaying the issuance of special conditions until after each design application is received could lead to costly certification delays. Therefore the FAA finds it necessary to issue special conditions applicable to these battery installations on particular makes and models of aircraft.

On April 22, 2016, the FAA published special conditions no. 25–612–SC in the **Federal Register** (81 FR 23573) applicable to Gulfstream Aerospace Corporation for the GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our decision to make those special conditions effective one year after publication in the **Federal Register**, which is April 22, 2017. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium battery special conditions to design changes on other makes and models applied for after this same date.

Section 1205 of the FAA Reauthorization Act of 1996 requires the FAA to consider the extent to which Alaska is not served by transportation modes other than aviation and to establish appropriate regulatory distinctions when modifying airworthiness regulations that affect intrastate aviation in Alaska. In consideration of this requirement and the overall impact on safety, the FAA does not intend to require non-rechargeable lithium battery special conditions for design changes that only replace a 121.5 megahertz (MHz) emergency locator transmitter (ELT) with a 406 MHz ELT that meets Technical Standard Order C126b, or later revision, on transport airplanes operating only in Alaska. This will support our efforts of encouraging operators in Alaska to upgrade to a 406 MHz ELT. These ELTs provide significantly improved accuracy for lifesaving services to locate an accident site in Alaskan terrain. The FAA considers that the safety benefits from upgrading to a 406 MHz ELT for Alaskan operations will outweigh the battery fire risk.

Comments Invited

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

Bombardier holds type certificate no. T00005NY, which provides the certification basis for the BD–100–1A10 airplane. The BD–100–1A10 is a twin engine, transport category airplane with a passenger seating capacity of 16 and a maximum takeoff weight of 38,500 to 40,600 pounds, depending on the specific design.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the BD–100–1A10 airplane. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Bombardier must show that the BD–100–1A10 airplane meets the applicable provisions of the regulations listed in type certificate no. T00005NY or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the BD–100–1A10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the BD–100–1A10 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The novel or unusual design feature is the installation of non-rechargeable lithium batteries.

For the purpose of these special conditions, we refer to a battery and battery system as a battery. A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging.

Discussion

The FAA derived the current regulations governing installation of batteries in transport category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an emergency locator transmitter installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency locator transmitters, life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, Internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.
- *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.
- *Flammability:* Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special conditions nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable fluid fire protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

These special conditions are applicable to the BD–100–1A10 airplane. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or to relocate the installation to improve the safety of the airplane and occupants. Previously certified non-rechargeable lithium battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions are also not applicable to unchanged, previously certified non-rechargeable lithium battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model BD–100–1A10 airplane.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments, each non-rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a ''battery'' and ''battery system'' are referred to as a battery.

Issued in Renton, Washington, on April 27, 2017.

Paul Bernado,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09661 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9494; Airspace Docket No. 16–ASW–19]

Amendment of Class E Airspace for Haskell, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Haskell Municipal Airport, Haskell, TX. The decommissioning of the Haskell radio beacon (RBN) and cancellation of RBN approach makes it necessary to implement new area navigation (RNAV) procedures 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, September 14, 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.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting

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

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

FOR FURTHER INFORMATION CONTACT: Ron Laster, Federal Aviation Administration, Contract Support, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5879.

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 E airspace at Haskell Municipal Airport, Haskell, TX to ensure the safety of aircraft within the National Airspace System.

History

The FAA published in the **Federal Register** (82 FR 11856, February 27, 2017) Docket No. FAA–2016–9494 a notice of proposed rulemaking (NPRM) to modify Class E airspace extending upward from 700 feet above the surface at Haskell Municipal Airport, Haskell, TX. 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 7400.11A, dated August 3, 2016, and effective September 15, 2016, 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 modifies Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Haskell Municipal Airport, Haskell, TX, by removing the area 8 miles east and 4 miles west of the 015° bearing from the Haskell RBN extending from the airport to 16 miles northeast of the RBN. This action also updates the geographic coordinates of the airport to be in concert with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to the decommissioning of the RBN and cancellation of the RBN approach and implementation of RNAV procedures for the safety and management of the standard instrument approach procedures for 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, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

* * * * *

ASW TX E5 Haskell, TX [Amended]

Haskell Municipal Airport, TX

(Lat. 33°11′29″ N., long. 99°43′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Haskell Municipal Airport.

Issued in Fort Worth, Texas, on May 4, 2017.

Walter Tweedy,

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

[FR Doc. 2017–09662 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9355; Airspace Docket No. 16–ANM–8]

Amendment of Class D and Class E Airspace; Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Friedman Memorial Airport, Hailey, ID, to support the implementation of new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures for Instrument Flight Rules (IFR) at the airport. Additionally, this action updates the airport's geographic coordinates in the Class D description, and amends the legal description of Class E surface area airspace adding the Notice to Airmen (NOTAM) part-time status information.

DATES: Effective 0901 UTC, August 17, 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.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/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 amends associated Class D and E airspace to support new RNAV procedures for IFR operations at Friedman Memorial Airport, Hailey, ID.

History

On January 23, 2017, the FAA published in the **Federal Register** (82 FR 7735) Docket FAA–2016–9355 a notice of proposed rulemaking (NPRM) to modify Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface, at Friedman Memorial Airport, Hailey, ID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. The four comments received supported the proposal.

The Class E surface area is a part-time airspace area, effective when the Class D airspace is not in effect, therefore requires NOTAM part-time status information. After publication, the FAA realized the proposal's legal description did not include the Notice to Airmen part-time status information.

Also, an editorial change is made to the Class D and Class E surface area legal descriptions replacing Airport/Facility Directory with the term Chart Supplement.

Class D and Class E airspace designations are published in paragraph 5000, 6002 and 6005, respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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, and Class E airspace extending upward from 700 feet above the surface at Friedman Memorial Airport, Hailey, ID. The amendments are made to support implementation of new RNAV (GPS) standard instrument approach procedures at the airport. More specifically, the new RNAV (GPS) procedures require additional Class D airspace in the vicinity of the airport for circling maneuvers, but require less airspace upward from 700 feet above the surface to support arrival and departure of IFR aircraft. Class D airspace is expanded from the surface to and including 7,800 feet MSL to within a 4.9-mile radius (increased from a 4.1-mile radius) of the airport, with an extension from the 4.9-mile radius increased from 6 miles to 6.3 miles southeast.

Class E surface area airspace is reduced to within a 4.9-mile radius of the airport, with a segment increased from 6 miles to 6.3 miles southeast of the airport to provide controlled airspace when Class D airspace is not in effect. Also, the NOTAM part-time status information is added in the Class D airspace legal description.

Class E airspace extending upward from 700 feet above the surface is reduced to within a 4.9-mile radius of the airport (from the 5.5-mile radius), with the southeast segment reduced from 15.5 miles to 11.3 miles from the radius of the airport. Additionally, the geographic coordinates for the airport listed in the Class D description are updated to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM ID D Hailey, ID [Modified]

Friedman Memorial Airport, ID
(Lat. 43°30′14″ N., long. 114°17′44″ W.)

That airspace extending upward from the surface to, and including, 7,800 feet MSL within a 4.9-mile radius of Friedman Memorial Airport, and that airspace within 2.1 miles west and 1.4 miles east of the 155° bearing from the airport extending from the airport 4.9-mile radius to 6.3 miles southeast of the airport. This Class D airspace area is effective during the specified 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 ID E2 Hailey, ID [Modified]

Friedman Memorial Airport, ID
(Lat. 43°30′14″ N., long. 114°17′44″ W.)

That airspace extending upward from the surface within a 4.9-mile radius of Friedman Memorial Airport, and within 2.1 miles west and 1.4 miles east of the 155° bearing from the airport, extending from the airport 4.9-mile radius to 6.3 miles southeast of the airport. This Class E airspace area is effective during the specified 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Hailey, ID [Modified]

Friedman Memorial Airport, ID
(Lat. 43°30′14″ N., long. 114°17′44″ W.)

That airspace extending upward from 700 feet above the surface within a 4.9-mile radius of Friedman Memorial Airport, and within 2.5 miles each side of the 155° bearing from the airport extending from the airport 4.9-mile radius to 11.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 44°00′00″ N., long. 114°55′00″ W., to lat. 44°00′00″ N., long. 113°53′00″ W., to lat. 43°00′00″ N., long. 113°49′00″ W., to lat. 43°00′00″ N., long. 114°55′00″ W., thence to point of beginning.

Issued in Seattle, Washington, on May 5, 2017.

Sam S.L. Shrimpton,

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

[FR Doc. 2017–09659 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0319]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, St. Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Upper Mississippi River from mile 179.2 to mile 180. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created during a fireworks display on and over the navigable waterway. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective from 9 p.m. to 11 p.m. on June 3, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0319 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because the Coast Guard was not notified of the fireworks display until March 22, 2017. After full review of the details for the planned display, the Coast Guard determined action is needed to protect people and property from the safety hazards associated with the fireworks display on the Upper Mississippi River (UMR) near St. Louis, MO. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period

and then consider those comments before issuing the rule; we must establish this safety zone by June 3, 2017.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Upper Mississippi River (COTP) has determined that potential hazards associated with the fireworks display will be a safety concern before, during, and after the display. The purpose of this rule is to ensure safety of persons and vessels in the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. to 11 p.m. on June 3, 2017. The safety zone will cover all navigable waters between miles 179.2 and 180 on the UMR in St. Louis, MO. Exact times of the closures during this two hour period will be communicated to mariners using broadcast and local notice to mariners. The safety zone is intended to ensure the safety of vessels and these navigable waters before, during and after the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This temporary final rule establishes a safety zone impacting a less than one mile area on the UMR for a limited time period of two hours. During the enforcement period, vessels are prohibited from entering into or remaining within the safety zone unless specifically authorized by the COTP or other designated representative. Based on the location, limited safety zone area, and short duration of the enforcement period, this rule has a minimum adverse impact to mariners from the safety zone's activation. Additionally, notice of the safety zone will be made via broadcast and local notice to mariners.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry from mile 179.2 to mile 180 on the UMR. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant

Instruction. An environmental analysis checklist supporting this determination and a Record of Environmental Consideration are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0319 to read as follows:

§ 165.T08–0319 Safety Zone; Upper Mississippi River, St. Louis, MO.

(a) *Location.* The following area is a safety zone: all navigable waters of the Upper Mississippi River between miles 179.2 to 180, St. Louis, MO.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through Coast Guard Sector Upper Mississippi River at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 9 p.m. to 11 p.m. on June 3, 2017.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone.

Dated: May 8, 2017.

M.L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2017–09604 Filed 5–11–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0196]

RIN 1625–AA00

Safety Zone; Main Branch of the Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Main Branch of the Chicago River, Chicago, IL. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and after a bridge based pyrotechnics display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

DATES: This rule is effective from 7:45 p.m. to 8:15 p.m. on May 20, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0196 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Lindsay Cook, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details for this event until there was insufficient time remaining before the event to publish a NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with a bridge based fireworks display on May 20, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

On May 20, 2017, a bridge based pyrotechnics display will take place on the Main Branch of the Chicago River between the Wells Street Bridge and the Dearborn Street Bridge in Chicago, IL. The Captain of the Port Lake Michigan has determined that the pyrotechnics display will pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, falling and burning debris, and collisions among spectator vessels.

IV. Discussion of the Rule

With the aforementioned hazards in mind, the Captain of the Port Lake

Michigan has determined that this temporary safety zone is necessary to ensure the safety of the public during the bridge based pyrotechnics display on the Main Branch of the Chicago River. This safety zone will be enforced from 7:45 p.m. to 8:15 p.m. on May 20, 2017. This zone will encompass all waters of the Main Branch of the Chicago River between the Wells Street Bridge and the Dearborn Street Bridge in Chicago, IL.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced May 20, 2017 from 7:45 p.m. to 8:15 p.m. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

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

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit on a portion of the Main Branch of the Chicago River on May 20, 2017 from 7:45 p.m. to 8:15 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Local Notice to Mariners so vessel owners and operators can plan accordingly.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone for a bridge based pyrotechnics display on the Main Branch of the Chicago River in Chicago, IL. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0196 to read as follows:

§ 165.T09–0196 Safety Zone; Main Branch of the Chicago River, Chicago, IL.

(a) *Location.* All U.S. navigable waters of the Main Branch of the Chicago River, between the Wells Street Bridge and Dearborn Street Bridge in Chicago, IL.

(b) *Enforcement period.* This rule will be enforced on May 20, 2017 from 7:45 p.m. to 8:15 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: May 5, 2017.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2017–09633 Filed 5–11–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0373; FRL–9961–87–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Infrastructure Requirements for the 2012 Fine Particulate Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a state implementation plan (SIP) revision submitted by the State of West Virginia. Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the Clean Air Act (CAA) requires states to submit a plan to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. The State of West Virginia made a submittal addressing the infrastructure requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS, and EPA is approving portions of this SIP revision in accordance with the requirements of the CAA.

DATES: This final rule is effective on June 12, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0373. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for $PM_{2.5}$. *See* 62 FR 38652 (July 18, 1997). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual $PM_{2.5}$ standard to 12 micrograms per cubic meter ($\mu g/m^3$). *See* 78 FR 3086 (January 15, 2013).[1]

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and

[1] In EPA's 2012 $PM_{2.5}$ NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for $PM_{2.5}$ to address PM related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes a secondary annual standard of 15 $\mu g/m^3$ and a 24-hour standard of 35 $\mu g/m^3$.

circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

II. Summary of SIP Revision

On November 17, 2015, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2012 $PM_{2.5}$ NAAQS. On December 23, 2016 (81 FR 94281), EPA published a notice of proposed rulemaking (NPR) proposing approval of portions of the West Virginia November 17, 2015 SIP submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (relating to prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA.

At this time, EPA is not taking action on the portions of West Virginia's November 17, 2015 SIP submission which addressed section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions, nor is the Agency taking action on the portion of the November 17, 2015 SIP submission which addressed section 110(a)(2)(D)(i)(II) relating to visibility protection. EPA intends to take later separate action on these portions of West Virginia's submittal as explained in the NPR and the Technical Support Document (TSD), which accompanied the NPR. The TSD is available in the docket for this rulemaking which is also available online at *www.regulations.gov.* Finally, West Virginia did not address in its submittal section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process if necessary.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2016–0373.

III. Public Comments and EPA's Responses

EPA received two anonymous comments on the December 23, 2016 proposed approval of portions of the West Virginia's 2012 $PM_{2.5}$ infrastructure SIP.

Comment 1: One commenter asked why West Virginia is any different than other states and stated that how particulate matter is measured and ''the standard'' for particulate matter should be the same for all states. The commenter stated that ''[w]hat is safe in one State, should not be different than another.''

Response 1: EPA thanks the commenter for the submitted statements. To clarify, West Virginia is not treated any differently than any other state in the United States under the CAA's NAAQS. Indeed, the ''standard'' for particulate matter and how particulate matter is ''measured'' (*i.e.,* monitored) is the same for all states.

Sections 108 and 109 of the CAA require EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. The NAAQS apply equally throughout all states. Once EPA sets a new or revised NAAQS, EPA must designate areas in every state as either attainment, unclassifiable, or nonattainment pursuant to section 107(d)(1)(B) and states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the relevant NAAQS in accordance with section 110(a).

Pursuant to sections 108 and 109 of the CAA, EPA has promulgated NAAQS for two sizes of particulate matter: PM_{10} and $PM_{2.5}$.[2] Because this action concerns the 2012 $PM_{2.5}$ NAAQS, EPA's response addresses the relevant NAAQS. On December 14, 2012, EPA revised the health based (primary) annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$, and this standard applies equally throughout all states. *See* 78 FR 3086 (January 15, 2013). Two years later, on December 14, 2014, EPA designated all areas in West Virginia as ''unclassifiable/attainment'' for the primary 2012 $PM_{2.5}$ NAAQS. *See* 80 FR 2206, 2278–2279 (January 15, 2015).[3] Finally, on November 17, 2015, West Virginia submitted a SIP revision to EPA to address the requirements of section 110(a)(2) of the CAA for the 2012 $PM_{2.5}$ NAAQS and identified West Virginia's measures to attain and maintain that NAAQS.

Regarding measurement of particulate matter, state and, where applicable, local and/or tribal, agencies (referred to herein as ''monitoring agencies'') are responsible for providing an air quality surveillance system in order to, among other goals, assess the extent of pollution, provide information on air quality trends, and support the implementation of air quality goals or standards (*i.e.,* the NAAQS). Monitoring agencies are required to submit to EPA an annual monitoring network plan which provides for the documentation of the establishment and maintenance of their air quality surveillance system.[4] These annual monitoring network plans require that ambient particulate matter data are collected through an approved network of specified ambient monitoring stations. Data from the approved monitoring stations are used to compare an area's air pollution levels against the NAAQS to make sure air quality is protective of public health and the environment. Monitoring agencies provide all ambient air quality data, including those related to $PM_{2.5}$, to EPA through the Agency's Air Quality Management System (AQS).

As discussed in the TSD for this action, WVDEP has the authority under state law ''to develop ways and means for the regulation and control of pollution of the air of the state'' and ''conduct such studies and research relating to air pollution and its control and abatement.'' EPA–R03–OAR–2016–0373–0006, p. 10. WVDEP currently operates and maintains an established network of ambient air monitors in West Virginia for the purpose of assessing compliance with the 2012 $PM_{2.5}$ NAAQS, and submits to EPA for approval, on an annual basis, a monitoring network plan, which describes how West Virginia is complying with monitoring requirements and explains any changes to the monitoring network. *Id.; see also* EPA–R03–OAR–2016–0373–0007 (Approval letter regarding WVDEP's 2015 annual monitoring network plan).

In summary, the NAAQS apply to all states in the country, all states monitor (or measure) particulate matter in accordance with CAA statutory and regulatory requirements, and West Virginia is not treated any differently for such purposes.

[2] Coarse particulate matter (PM_{10}) are generally 10 micrometers and smaller, while fine particulate matter (or $PM_{2.5}$) consist of fine inhalable particles, with diameters that are generally 2.5 micrometers and smaller.

[3] The rule explains that ''EPA is designating areas as nonattainment, unclassifiable, or unclassifiable/attainment.''

[4] Each monitoring agency must submit to EPA for approval an annual monitoring network plan that is in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58.

Comment 2: The commenter stated that ''[A]ir quality is important for our environment and our health. Infrastructure improvements can provide jobs as well.''

Response 2: EPA thanks the commenter for the support for air quality and health. The commenter's statement regarding ''infrastructure improvements'' likely reflects the commenter's concern for improvements to bridges and roads which are more traditionally understood as ''infrastructure'' in the United States. Thus, EPA believes the comment related to ''infrastructure improvements'' is likely unrelated to EPA's approval of West Virginia's ''infrastructure'' SIP submittal which addresses requirements in CAA section 110(a)(2) to provide the necessary structural requirements such as emission limitations and monitoring requirements for attaining and maintaining the 2012 $PM_{2.5}$ NAAQS in West Virginia. EPA described in detail in the NPR and in the TSD, which accompanied the NPR, how West Virginia's SIP provides the basic structural requirements. As the comment is not germane to EPA's rulemaking, no further response is provided.

IV. Final Action

EPA is approving portions of the West Virginia's SIP revision regarding the infrastructure program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II) (relating to prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2012 $PM_{2.5}$ NAAQS. EPA will conduct separate rulemaking action on the portions of West Virginia's November 17, 2015 SIP submission addressing section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions and addressing section 110(a)(2)(D)(i)(II) relating to visibility protection. This rulemaking action does not include any action addressing section 110(a)(2)(I) of the CAA for the 2012 $PM_{2.5}$ NAAQS which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process, if necessary.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action which approves portions of the West Virginia SIP submittal to address the CAA section 110(a)(2) infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 12, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding the entry ''Section 110(a)(2) Infrastructure Requirements for the 2012 PM**2.5** NAAQS'' at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/17/15	5/12/17, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

[FR Doc. 2017–09504 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0116; FRL–9961–44–Region 4]

Air Plan Approval; Georgia: Heavy Duty Diesel Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to a State Implementation Plan (SIP) revision submitted by the State of Georgia on January 25, 2016, for the purpose of removing the requirements for heavy duty diesel engines (HDDE), which bar the sale/lease or import in the State of Georgia of any new HDDE that were not certified by the California Air Resources Board (CARB) to meet the emission standards of the California HDDE rules. The removal of this rule will prevent regulatory confusion and make it clear that the more stringent EPA emission standards for HDDE are applicable. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective July 11, 2017 without further notice, unless EPA receives adverse comment by June 12, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0116 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222, Ms. Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The federal Clean Air Act (CAA) establishes the framework for controlling mobile-source emissions in the United States. During the development of the CAA in 1967, Congress recognized that the imposition of many different state standards could result in inefficiencies in vehicle markets. Therefore, state-established emissions standards were preempted by federal emissions standards in what is now section 209 of the CAA. A special exemption to this federal preemption was made in section 209 for California because of the state's special air quality problems and pioneering efforts in the control of air pollutants. This exemption, still in existence, gives the State of California the authority to set on-road vehicle standards that differ from the federal standards as long as they are as protective in the aggregate as federal standards. Later amendments to section 209 granted California the authority to set emissions standards and regulations for some nonroad engines, and section 177 was added to allow other states to adopt California standards. *See* CAA section 209(b), 42 U.S.C. 7543(b). Section 177 of the CAA allows other states to adopt standards and test procedures identical to California's. However, regardless of whether a manufacturer receives CARB approval, all new motor vehicles and engines must still receive certification from EPA before the vehicle is introduced into commerce. If a state adopts CARB standards in lieu of the federal standards and then later removes the requirement for the CARB standards, the Federal CAA vehicle standards will apply in that state.

In 1994, the CARB approved a plan that called for emission standards for highway heavy-duty diesel vehicles beginning in 2004. In June of 1995, CARB, EPA, and the manufacturers of heavy-duty vehicle engines signed a statement of principles (SOP) calling for the harmonization of CARB and EPA heavy-duty vehicle regulations.

In 1998, the federal government and seven HDDE manufacturers entered into consent decrees as a result of enforcement actions that were brought against the manufacturers because a majority of the diesel engine manufacturers had programmed their engines to defeat federal test procedures (FTP) through the use of a ''defeat device.'' As a part of the consent decree, the majority of the settling manufacturers agreed to produce by October 1, 2002, engines that would meet supplemental test procedures including the Not-To-Exceed (NTE) test and the EURO III European Stationary Cycle (ESC) test. These requirements were to be met for a period of two years.

Recognizing the effectiveness of the supplemental tests, EPA published a notice of proposed rulemaking on October 29, 1999, *see* 64 FR 58472,

proposing to adopt the supplemental standards and test procedures for 2004 and subsequent model-year HDDEs. However, because of statutory and legal timing constraints, the NTE and ESC standards and test procedures were not to be required until the 2007 model year. Therefore, once the consent decree requirements would expire in 2004, diesel engine manufacturers would no longer be obligated to comply with the supplemental test procedures in 2005 and would be able to forgo the supplemental testing until the 2007 model year, when the federal rules came into effect. In anticipation of this regulatory gap, on December 8, 2000, California finalized a rule under section 1956.8 of the California Code of Regulations requiring HDDE manufacturers to perform the NTE and the ESC supplemental test procedures in addition to the existing FTP.

On October 6, 2000, EPA's final rule on the *Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty On-Board Diagnostics Requirements* was issued. *See* 65 FR 59896. However, as explained above, it did not include the NTE standards for model years 2005 and 2006.

On December 28, 2001, Georgia submitted a SIP revision which contained Rule 391–3–1–.02(2)(ooo) ''Heavy Duty Diesel Engine Requirements.'' The Georgia Heavy-Duty Diesel Engine Requirements Rule adopted and incorporated by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and subsequent model year heavy-duty diesel engines. The Rule required that any new on-road heavy-duty diesel vehicle or engine sold, leased, rented, imported or delivered in the state must have a CARB Executive Order (a vehicle certification issued by CARB to vehicle manufacturers). This requirement was also imposed on any new on-road heavy-duty diesel vehicle or engine leased, purchased, acquired, or received or offered for sale, lease or rent. The Heavy-Duty Diesel Engine Requirements Rule required any ''person'' who imports, sells, delivers, leases, or rents an engine or motor vehicle that is subject to the rule to retain records concerning the transaction for at least 3 years following the transaction and to submit annually a report documenting the total sales and/or leases of engines and motor vehicles for each engine family over the calendar year in Georgia. The requirement that new on-road heavy-duty diesel vehicles or engines must have a CARB Executive Order began with the 2005 model year. This rule incorporated the December 8, 2000, requirements of CARB for heavy duty diesel engines into the Georgia SIP for the purpose of avoiding possible ''backsliding'' in a former severe nonattainment area and potential significant increases in diesel exhaust emissions because of the lack of these procedures in federal regulations for the model years 2005 and 2006. EPA approved Georgia SIP revision on July 11, 2002. See 67 FR 45909.

Subsequently, EPA addressed the NTE standards for model years 2005 and 2006 by proposing a new rule on June 21, 2004, that included a two-phase NTE testing scheme for all pollutants. *See* 69 FR 34326. The final rule adopting these requirements for 2005 and newer model-year HDDE and heavy-duty on-highway vehicles was published in the **Federal Register** on June 14, 2005. *See* 70 FR 34594. When EPA finalized its rule adopting test requirements for 2005 and newer models, the regulatory gap that prompted Georgia's adoption of the CARB standards was eliminated.

II. Analysis of State's Submittal

On January 25, 2016, Georgia submitted to EPA a SIP revision to remove from the SIP the version of Georgia Rule 391–3–1–.02(2)(ooo)—*Heavy Duty Diesel Requirements,* that was approved into the Georgia SIP on July 11, 2002. Georgia requested removal of the California standards approved into its SIP because the new federal standard requires the manufacturers to meet emission limits that are equivalent to the California standards. The Federal CAA standards for vehicles and fuel will replace the CARB standards and will, in the absence of the incorporated CARB standards, apply in Georgia. The removal of this rule will prevent regulatory confusion and will clarify that the more stringent EPA emission standards for HDDE are applicable. The removal of Georgia Rule 391–3–1–.02(2)(ooo) will not interfere with attainment or reasonable further progress, or any other applicable requirement of the Act because the federal standards are applicable.

III. Final Action

EPA is taking final action to approve the SIP revision submitted by Georgia on January 25, 2016, to remove Georgia Rule 391–3–1–.02(2)(ooo) Heavy Duty Diesel Engine Requirements from the Georgia SIP. EPA has determined that Georgia's January 25, 2016, SIP revision is consistent with the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 11, 2017 without further notice unless the Agency receives adverse comments by June 12, 2017.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 11, 2017 and no further action will be taken on the proposed rule.

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

§ 52.570 [Amended]

■ 2. Amend § 52.570(c) by removing the entry for ''391–3–1–.02(2)(ooo).''

[FR Doc. 2017–09493 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0133; FRL–9961–93–Region 10]

Approval and Promulgation of Implementation Plans; Alaska: Infrastructure Requirements for the 2010 Nitrogen Dioxide and 2010 Sulfur Dioxide Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, each state must submit a plan for the implementation, maintenance and enforcement of such standard—commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is approving the May 12, 2015 Alaska State Implementation Plan (SIP) submission as meeting the infrastructure requirements for the 2010 nitrogen dioxide (NO_2) and 2010 sulfur dioxide (SO_2) NAAQS.

DATES: This final rule is effective June 12, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2016–0133. All documents in the docket are listed on the *https://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below, to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency—Region 10, 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553–6357; email address: *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background
II. Response to Comment
III. Final Action
IV. Statutory and Executive Orders Review

I. Background

On May 12, 2015, Alaska submitted a SIP to meet the infrastructure requirements of Clean Air Act (CAA) sections 110(a)(1) and (2) for the 2010 NO_2 and 2010 SO_2 NAAQS. On July 20, 2016, the EPA proposed to approve the submission as meeting certain infrastructure requirements (81 FR 47103). Please see our proposed rulemaking for further explanation and the basis for our finding. The public comment period for this proposal ended on August 19, 2016. We received one comment, from Robert Ukeiley.

II. Response to Comment

Comment: The ''EPA must disapprove 110(a)(2)(C) because the Alaska SIP does not require that minor sources cannot obtain a minor source permit if they will cause or contribute to a violation of any of the current NAAQS. Furthermore, for some pollutants, the Alaska SIP has thresholds below which sources do not have to demonstrate that they will not cause or contribute to a violation of that NAAQS. However, there is no evidence that sources below these thresholds cannot cause or contribute to a NAAQS violation. Rather, these thresholds are arbitrary numbers.''

Response: The EPA agrees that CAA section 110(a)(2)(C) and the minor new source review regulations at 40 CFR 51.160 through 51.164 require SIPs to include procedures by which the state or local agency responsible for final decision-making on an application or approval to construct or modify will prevent such construction or modification if it will interfere with the attainment or maintenance of a national standard or if it will result in a violation of applicable portions of the control strategy. *See* 40 CFR 51.160(b). The EPA explained its approach to reviewing the minor source element of CAA section 110(a)(2)(C) in its proposed rulemaking for this action: ''Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and the EPA's regulations that pertain to such programs.'' *See* 81 FR 47103 at 47106 (July 20, 2016).

In its 2010 NO_2 and 2010 SO_2 NAAQS infrastructure SIP submission, Alaska certified that its SIP contains provisions to address the CAA section 110(a)(2)(C) requirements regarding new minor sources and modifications in Article 5 (minor permits) of Alaska's air quality control regulations set forth at 18 AAC 50. Alaska's SIP-approved minor new source review program addresses NAAQS pollutants, including NO_2 and SO_2. The commenter objects to these SIP-approved rules for two reasons. First, the commenter asserts that the rules do not address the non-interference component for the minor new source/minor modification permitting element. However, we disagree with the commenter. Alaska's SIP-approved rules include provisions to deny a minor new source construction/modification permit if the source at issue will result in a violation of an ambient air quality standard. *See* 18 AAC 542(f) *Approval Criteria.*

The commenter also objects to these SIP-approved rules because they include emissions thresholds below which a minor new source review permit may not be required. *See* 18 AAC 50.502. We agree with the commenter that Alaska's rules do include emissions thresholds for both new sources and modifications with respect to certain pollutants, including NO_2 and SO_2, below which minor new source review permits may not be required. The EPA's requirements for SIP-approved minor new source review programs do not require a state to permit each and every stationary source no matter how small, but rather require that a state specifically identify the types and sizes of facilities that will be subject to review. *See* 40 CFR 51.160(e). We have previously found that Alaska's current program meets all minor new source review permitting requirements set forth at 40 CFR 51.160 through 40 CFR 51.164, including this requirement (September 19, 2014; 79 FR 56268). Therefore, we are finalizing our action.

III. Final Action

The EPA is approving the May 12, 2015 Alaska SIP submission as meeting the following CAA section 110(a)(2) infrastructure elements for the 2010 NO_2 and 2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We note that the May 12, 2015 submission also included revisions to Alaska's transportation conformity regulations, approved on September 8, 2015 (80 FR 53735), and updates to general air quality and permitting regulations, approved on May 19, 2016 (81 FR 31511).

IV. Statutory and Executive Orders Review

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

''major rule'' as defined by 5 U.S.C. 804(2).

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: April 11, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart C—Alaska

■ 2. In § 52.70, the table in paragraph (e) is amended by:

■ a. Revising the entry for ''CAA Section 110 Infrastructure Certification Documentation and Supporting Documents''; and

■ b. Adding two entries at the end of the table for ''110(a)(2) Infrastructure Requirements—2010 NO_2 NAAQS'' and ''110(a)(2) Infrastructure Requirements—2010 SO_2 NAAQS''.

The revision and additions read as follows:

§ 52.70 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	*	*	*	* * *
State of Alaska Air Quality Control Plan: Volume III. Appendices				
Section II State Air Quality Control Program				
*	*	*	*	* * *
CAA Section 110 Infrastructure Certification Documentation and Supporting Documents.	Statewide	5/12/15	5/12/17, [Insert **Federal Register** citation].	
*	*	*	*	* * *
Section 110(a)(2) Infrastructure and Interstate Transport				
*	*	*	*	* * *
110(a)(2) Infrastructure Requirements—2010 NO_2 NAAQS.	Statewide	5/12/15	5/12/17, [Insert **Federal Register** citation].	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 NO_2 NAAQS.
110(a)(2) Infrastructure Requirements—2010 SO_2 NAAQS.	Statewide	5/12/15	5/12/17, [Insert **Federal Register** citation].	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 SO_2 NAAQS.

[FR Doc. 2017–09533 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0584; FRL–9960–43–Region 10]

Air Plan Approval; ID, Updates to Incorporations by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve, and incorporate by reference, portions of Idaho's April 28, 2016, State Implementation Plan submittal (SIP submittal) that update the incorporation by reference of federal air quality regulations. We note that this action does not address the changes

Idaho withdrew related to transportation conformity requirements.

DATES: This rule is effective July 11, 2017, without further notice, unless the EPA receives adverse comment by June 12, 2017. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2016–0584 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553–1999, or *ruddick.randall@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background
II. Analysis of Rule Updates
III. Final Action
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I. Background

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality protection requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP is the state's plan to implement, maintain, and enforce National Ambient Air Quality Standards (NAAQS) set by the EPA. Idaho regularly updates the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) to reflect changes to the NAAQS and to improve implementation, maintenance, and enforcement of those standards. We note that Idaho incorporates by reference portions of certain federal regulations directly into the SIP. The state generally submits an annual update to the EPA to keep rules consistent with federal requirements.

II. Analysis of Rule Updates

A. Incorporations by Reference

On April 28, 2016, Idaho submitted revisions to state air quality rules at IDAPA 58.01.01 to the EPA for approval into the SIP. Idaho revised section .03 of IDAPA 58.01.01.107 *Incorporations by Reference* by updating the citation dates that incorporate federal provisions and the effective dates of the incorporated federal provisions from July 1, 2014 to July 1, 2015. IDAPA 58.01.01.107.03.a incorporates by reference 40 CFR part 51, *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* with the exception of certain visibility-related provisions, effective as of July 1, 2015. We note that Idaho did not submit updates to the incorporation of federal provisions relied on as part of the State's nonattainment area major stationary source preconstruction permitting program.

IDAPA 58.01.01.03.b, .d, and .e incorporate the following provisions effective as of July 1, 2015: National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58. We find that paragraphs .b, .d, and .e are consistent with CAA requirements.

IDAPA 58.01.01.03.c incorporates the Approval and Promulgation of Implementation Plans, 40 CFR part 52, subparts A and N, and appendices D and E. This includes the federal Prevention of Significant Deterioration (PSD) permitting rules at 40 CFR 52.21 and 52.22, as effective July 1, 2015. The EPA promulgated revisions to 40 CFR 52.21 and repealed 52.22 since July 1, 2015 in response to a court remand and vacatur. Specifically, on June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group (UARG)* v. *EPA,*[1] issued a decision addressing the application of PSD permitting to greenhouse gas (GHG) emissions. The Supreme Court said the EPA may not treat GHGs as air pollutants for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limits on GHG emissions based on the application of Best Available Control Technology (BACT). In response to the *UARG* decision, and the subsequent Amended Judgment issued by the D.C. Circuit (Amended Judgment),[2] the EPA revised the federal PSD rules to allow for the rescission of PSD permits that are no longer required under these decisions, 80 FR 26183 (May 7, 2015), and to remove the regulatory provisions that were specifically vacated by the Amended Judgment, 80 FR 50199 (August 19, 2015) (removing 40 CFR 51.166(b)(48)(v), 52.21(b)(49)(v), 52.22, 70.12, and 71.13). In addition, the EPA has proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. 81 FR 68110 (Oct. 3, 2016).

Idaho's adoption by reference of 40 CFR 52.21 and 52.22 as of July 1, 2015 included the May 7, 2015 revisions to 40 CFR 52.21(w),[3] providing a mechanism for Idaho to rescind PSD permits that are no longer required in light of *UARG* and the Amended Judgment, but did not include the August 19, 2015 revisions to the federal PSD program removing the PSD provisions vacated by the Amended Judgment. The Idaho SIP currently contains the vacated GHG provisions (through the incorporation by reference of a previous version of 40 CFR 52.21), so the EPA's approval of the CFR incorporation by reference update to July 1, 2015 does not change the Idaho SIP with respect to the vacated provisions. However, the now-vacated portions of 40 CFR 52.21 incorporated into the Idaho SIP-approved PSD program are no longer enforceable. The EPA believes this portion of the Idaho SIP should be revised in light of the D.C. Circuit's Amended Judgment, but the EPA also notes that these provisions may not be implemented even prior to their removal from the Idaho SIP because the court decisions described above have determined these parts of the EPA's regulations are unlawful. Further, Idaho has advised the EPA that

[1] 134 S.Ct. 2427 (2014).

[2] *Coalition for Responsible Regulation* v. *EPA,* Nos. 09–1322, 10–073, 10–1092, and 10–1167 (April 15, 2015).

[3] Idaho's 2015 adoption by reference did not include the additional revisions to the permit rescission provisions in 40 CFR 52.21(w) published on November 7, 2016. 81 FR 78043. These revisions did not specifically relate to GHGs.

it is not currently enforcing these provisions in light of the Supreme Court decision and that the Idaho Department of Environmental Quality has adopted an update to its incorporation by reference of the CFR, including the August 19, 2015 revisions to 40 CFR 52.21 and 52.22, which update awaits final approval by the Idaho Legislature, likely to occur in March of 2017. We are therefore approving paragraph .c with the understanding that the GHG provisions vacated by the court decisions cannot be implemented and are not being enforced by Idaho. We are also approving Idaho's revisions to IDAPA 58.01.01.03.a, .b, .d, and .e as described in this section.

B. Procedures and Requirements for Permits To Construct

Idaho revised IDAPA 58.01.01.200 *Procedures and Requirements for Permits to Construct* to clarify that the state incorporates the federal definitions of ''major stationary source'' and ''major modification'' applicable in attainment and unclassifiable areas, in addition to the federal definitions of those terms applicable in nonattainment areas, effective as of the citation date in IDAPA 58.01.01.107, which is July 1, 2015. We are approving the clarification.

III. Final Action

The EPA is approving and incorporating by reference the following revisions to the Idaho SIP submitted on April 28, 2016:

- IDAPA 58.01.01.107 *Incorporations by Reference,* except .03.f through .p, and with respect to .a, the incorporation by reference of 40 CFR 51.165 (State effective March 25, 2016); and
- IDAPA 58.01.01.200 *Procedures and Requirements for Permits to Construct* (State effective March 25, 2016).

We note that this action does not address the changes to IDAPA 58.01.01.107.q, .563, and .564 related to transportation conformity requirements. Idaho withdrew these three revisions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. These materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[4] The EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble).

V. Statutory and Executive Orders Review

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: February 7, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

[4] 62 FR 27968 (May 22, 1997).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670, the table in paragraph (c) is amended by revising entries ''107'' and ''200'' to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	* *	* *
107	Incorporation by Reference.	3/25/2016, 3/20/2014, 3/30/2007, 7/1/1997, 5/1/1994.	5/12/2017, [insert **Federal Register** citation].	Except Section 107.03.f through 107.03.p, and with respect to 107.03.a the incorporation by reference of 40 CFR 51.165.
*	*	*	* *	* *
200	Procedures and Requirements for Permits to Construct.	3/25/2016	5/12/2017, [insert **Federal Register** citation].	
*	*	*	* *	* *

* * * * *

[FR Doc. 2017–09542 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0614; FRL–9961–74–Region 4]

Air Plan Approval; North Carolina Repeal of Transportation Facilities Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking action to approve a State Implementation Plan (SIP) revision, submitted by the North Carolina Department of Environmental Quality through the Division of Air Quality (DAQ) on September 16, 2016, for the purpose of removing the statewide transportation facilities rules. The State provided a Clean Air Act section 110(l) noninterference demonstration establishing that removal of the North Carolina transportation facilities rules will not interfere with the maintenance of the 8-hour carbon monoxide standard or any other national ambient air quality standards (NAAQS). EPA is approving this SIP revision because the DAQ has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective July 11, 2017 without further notice, unless EPA receives adverse comment by June 12, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0614 at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1978, EPA designated Mecklenburg County, North Carolina (hereinafter the ''Charlotte Area'') as nonattainment for the NAAQS for carbon monoxide (CO). Then, under the CAA amendments of 1990, the Charlotte Area was designated as ''not-classifiable'' and had five years to attain the CO NAAQS (*i.e.,* November 15, 1995). On November 15, 1990, Durham and Wake Counties (hereinafter the ''Raleigh-Durham/Chapel Hill Area'') and Forsyth County (hereinafter the ''Winston-Salem Area'') in North Carolina were designated as ''moderate'' nonattainment and had until December 31, 1995, to attain the standard.

In April 1994, DAQ submitted a request to EPA to redesignate the Winston-Salem Area to attainment status, and in November 1994, EPA approved the maintenance plan for CO (59 FR 48402), and redesignated the area to attainment/maintenance for CO. Next, in 1995, EPA approved the Charlotte and Raleigh-Durham/Chapel Hill Areas' maintenance plans for CO and redesignated the area to attainment/maintenance for CO (60 FR 39262). In

2015, these areas completed the 20-year maintenance periods, and EPA redesignated them to attainment.

North Carolina adopted the transportation facility rules on November 15, 1973, pursuant to the federal requirement (40 CFR part 51.18) to control emissions from indirect (complex) sources. North Carolina identifies transportation facilities as complex sources in its rules (N.C.G.S. 143–213(22)) and includes any facilities that cause increased emissions from motor vehicles. In 1974, EPA suspended the indirect source review programs, including 40 CFR part 51.18. The 1977 CAA amendments codified this suspension in section 110(a)(5)(A)(i); this suspension allowed states to include indirect source review regulations in their State Implementation Plans (61 FR 3584; 62 FR 41277; 63 FR 72193; 64 FR 61213), but EPA could not require them as a condition of its approval of the SIP.

In 2013, the North Carolina General Assembly enacted Session Law 2013–2014 that sought to streamline the regulatory process and eliminate unnecessary regulation. The State Environmental Management Commission recommended repealing the transportation facility rules in 15A NCAC 02D .0800—Complex Sources and 02Q .0600—Transportation Facilities Procedures. The transportation facility rules are aimed at addressing CO emissions, and North Carolina does not have any CO nonattainment areas. As a result, DAQ proposes to repeal the transportation facilities rule.

II. Analysis of State's Submittal

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) (as defined in section 171), or any other applicable requirement of the Act. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. DAQ provided a demonstration that shows that the repeal of the statewide North Carolina transportation facilities rules will not interfere with the maintenance of the CO standards or any other NAAQS or other CAA requirement. The rules, which are focused on addressing CO emissions, offer no environmental benefit to the State now that it no longer has any CO nonattainment areas. The Charlotte, Raleigh-Durham/Chapel Hill and Winston-Salem Areas have been redesignated to maintenance (60 FR 39262 and 59 FR 48402), and the monitoring data for CO in 2016 shows that all three areas are well below the 8-hour CO standard. The complex sources (transportation facilities) rules do not set requirements for any other NAAQS, including ozone, particulate matter, sulfur dioxide, nitrogen dioxide and lead, and therefore, removing the transportation facilities rules in 15A NCAC 02D .0800—Complex Sources and 02Q .0600—Transportation Facilities Procedures would not result in violations of the NAAQS.

III. Final Action

EPA is approving the aforementioned changes to remove 15A NCAC 02D .0800—Complex Sources and 02Q .0600—Transportation Facilities Procedures, from the SIP for North Carolina. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 11, 2017 without further notice unless the Agency receives adverse comments by June 12, 2017.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 11, 2017 and no further action will be taken on the proposed rule.

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: March 31, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

§ 52.1770 [Amended]

■ 2. Section 52.1770(c), Table 1 is amended:

■ a. Under ''Subchapter 2D Air Pollution Control Requirements'' by removing the heading ''Section .0800 Complex Sources'' and the entries ''Sect .0801'' through ''Sect .0806''; and

■ b. Under ''Subchapter 2Q Air Quality Permits'' by removing the heading ''Section .0600 Transportation Facility Procedures'' and the entries ''Sect .0601'' through ''Sect .0607''.

[FR Doc. 2017–09539 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[EPA–HQ–OPPT–2010–0572; FRL–9962–58]

RIN 2070–AK39

Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: EPA is hereby extending the effective date of the final rule that appeared in the **Federal Register** of January 12, 2017, and established final reporting and recordkeeping requirements for certain chemical substances when they are manufactured or processed at the nanoscale as described in that rule.

DATES: The effective date of the final rule that appeared in the **Federal Register** of January 12, 2017 (82 FR 3641), is delayed from May 12, 2017, to August 14, 2017.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0572, is available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; email address: *alwood.jim@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. What action is the Agency taking?

EPA is extending the effective date for a final rule that appeared in the **Federal Register** of January 12, 2017 (82 FR 3641; FRL–9957–81) from May 12, 2017 to August 14, 2017. That rule established final reporting and recordkeeping requirements for certain chemical substances when they are manufactured or processed at the nanoscale as described in that rule. Specifically, the rule requires persons that manufacture (defined by statute to include import) or process, or intend to manufacture or process these chemical substances to electronically report to EPA certain information, which includes insofar as known to or reasonably ascertainable by the person making the report, the specific chemical identity, production volume, methods of manufacture and processing, exposure and release information, and existing information concerning environmental and health effects. The rule involves one-time reporting for existing discrete forms of certain nanoscale materials, and a standing one-time reporting requirement for new discrete forms of certain nanoscale materials before those new forms are manufactured or processed.

Section 553(b)(1)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(1)(B), allows an action to be taken without opportunity for notice or comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In addition, Section 553(d)(3), 5 U.S.C. 553(d)(3), allows the effective date of an action to be less than 30 days when a good cause finding is made. Because of the complex issues regarding reporting requirements of the rule and the immediate pendency of the effective date of the reporting requirements, it would be impractical to make the effective date of this extension 30 days after its publication, and it would be impractical to get public comments on an extension of the effective date of the rule. In addition, the public interest is served by complete and accurate reporting under the rule, which would be greatly facilitated by publication of the guidance. Therefore, EPA finds good cause to extend the effective date of the rule without notice and comment.

II. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not significant regulatory action as this term is defined in Executive Order 12866 (58 FR 51735, October 4, 1993). As such, this action is not subject to the requirements that apply to significant regulatory actions in Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action simply extends the effective date and does not otherwise involve any information collection activities subject to the PRA, 44 U.S.C. 3501 *et seq.* The information collection activities in 40 CFR part 704 related to TSCA section 8(a) reporting rules are approved by OMB under the PRA and assigned OMB control No. 2070–0067 (EPA ICR No. 1198).

C. Regulatory Flexibility Act (RFA)

I certify under section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* that this action will not have a significant economic impact on a substantial number of small entities under the RFA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

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

EPA believes that this action would not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 704

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

Dated: May 8, 2017.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–09683 Filed 5–9–17; 4:15 pm]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 82, No. 91
Friday, May 12, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0355; Airspace Docket No. 17–AGL–12]

Proposed Amendment of Class D and Class E Airspace Mosinee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending up to 700 feet above the surface at Central Wisconsin Airport, Mosinee, WI, to accommodate new standard instrument approach procedures for instrument flight rules (IFR) operations at the airport. This action is necessary due to the decommissioning of the Mosinee outer marker (OM) and DANCI locator outer marker (LOM) and cancellation of the associated approaches, and would enhance the safety and management of IFR operations at the airport. This action would also update the geographic coordinates of the airport and the Wausau VHF Omni-Directional Radio Range and Collocated Tactical Air Navigation (VORTAC). This proposal would also update the geographic coordinates in Class D and Class E surface area airspace, and would make an editorial change in the legal description by replacing Airport/Facility Directory with the term Chart Supplement.

DATES: Comments must be received on or before June 26, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2017–0355/Airspace Docket No. 17–AGL–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: Ron Laster, Federal Aviation Administration, Contract Support, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5879.

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 to support IFR operations in standard instrument approach procedures at the airport.

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. Commenters 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- 0355/Airspace Docket No. 17–AGL–12.'' 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/.*

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 Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

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 and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 modifying Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Central Wisconsin Airport, with a segment 3.3 miles each side of the 350° bearing from the airport extending from the 7-mile radius to 12.3 miles north of the airport. The segment within 4 miles each side of the Wausau VORTAC 039° radial extending from the 7-mile radius to 10.9 miles northeast of the airport would be removed due to the decommissioning of the Mosinee OM and DANCI LOM and cancellation of the associated approaches. This action would enhance the safety and management of the standard instrument approach procedures for IFR operations at the airport. This action would also update the geographic coordinates of the airport and the Wausau VORTAC.

Additionally, this action would replace the outdated term Airport/Facility Directory with the term Chart Supplement in Class D and Class E surface area airspace, as well as update the airport coordinates for Central Wisconsin Airport.

Class D and E airspace designations are published in paragraph 5000, and 6005 respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, 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.

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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL WI D Mosinee, WI [Amended]

Central Wisconsin Airport, WI
(Lat. 44°46′40″ N., long. 89°40′00″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.5-mile radius of the Central Wisconsin Airport. This Class D airspace area is effective during the specific dates and times established in advance by 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.

* * * * *

AGL WI E2 Mosinee, WI [Amended]

Central Wisconsin Airport, WI
(Lat. 44°46′40″ N., long. 89°40′00″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL WI E5 Mosinee, WI

Central Wisconsin Airport, WI
(Lat. 44°46′40″ N., long. 89°40′00″ W.)
Wausau VORTAC
(Lat. 44°50′48″ N., long. 89°35′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Central Wisconsin Airport, and within 3.3 miles each side of the 350° bearing from the airport extending from the 7-mile radius to 12.3 miles north of the airport, excluding the airspace within the Wausau, WI, Class E airspace area.

Issued in Fort Worth, Texas, on May 5, 2017.

Christopher L. Southerland,

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

[FR Doc. 2017–09660 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0188; Airspace Docket No. 17–AGL–8]

Proposed Amendment of Class E Airspace; for Brainerd, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending up to 700 feet above the surface at Brainerd Lakes Regional Airport (formerly Brainerd-Crow County Regional Airport), Brainerd, MN. Airspace reconfiguration is necessary due to the decommissioning of the Brainerd (BRD) VHF Omnidirectional Radio Range Tactical Air Navigation Aid (VORTAC), and cancellation of the VOR approach. This action would also update the geographic coordinates of the airport

and the airport name in the Class E airspace above and in Class E surface area airspace. Additionally, an editorial change would be made to the Class E surface area airspace legal description replacing Airport/Facility Directory with the term Chart Supplement.

DATES: Comments must be received on or before June 26, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2017–0188; Airspace Docket No. 17–AGL–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Ron Laster, Federal Aviation Administration, Contract Support, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5879.

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 modify Class E airspace extending up to and including 700 feet above the surface at Brainerd Lakes Regional Airport, Brainerd, MN to ensure the safety of IFR operations under standard instrument approach procedures.

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 (Docket No. FAA–2017–0188/Airspace Docket No. 17–AGL–8 and be submitted in triplicate to DOT Docket Office (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Commenters 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– 0188/Airspace Docket No. 17–AGL–8.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see 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 Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 modifying Class E airspace extending upward from 700 feet above the surface within a 7.1 mile (from a 7.9-mile) radius of Brainerd Lakes Regional Airport (formerly Brainerd-Crow County Regional Airport), MN, with a segment extending 2 miles each side of the 233° bearing extending from the 7.1-mile radius to 9.1 miles southwest of the airport.

Airspace reconfiguration is necessary due to the decommissioning of the Brainerd VORTAC, and cancellation of the VOR approaches, which would enhance the safety and management of the standard instrument approach procedures for IFR operations at the airport. This action would also update the geographic coordinates of the airport.

Additionally, this action would replace the outdated term Airport/Facility Directory with the term Chart Supplement in Class E surface area airspace, as well as update the airport name from Brainerd-Crow Wing County Regional Airport to Brainerd Lakes Regional Airport.

Class E airspace designations are published in paragraph 6002 and 6005,

respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

* * * * *

AGL MN E2 Brainerd, MN [Amended]

Brainerd Lakes Regional Airport, MN
(Lat. 46°24′15″ N., long. 94°08′02″ W.)

Within a 4.3-mile radius of Brainerd Lakes Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AGL MN E5 Brainerd, MN [Amended]

Brainerd Lakes Regional Airport, MN
(Lat. 46°24′15″ N., long. 94°08′02″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Brainerd Lakes Regional Airport, MN and within 2 miles each side of the 233° bearing extending from the 7.1-mile radius to 9.1 miles southwest of the airport.

Issued in Fort Worth, Texas, on May XX, 2017.

Walter Tweedy,

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

[FR Doc. 2017–09665 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0298; Airspace Docket No. 17–ASW–7]

Proposed Amendment of Class E Airspace; Vivian, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending up to 700 feet above the surface at Vivian Airport, Vivian, LA. This action is necessary due to the decommissioning of the Vivian non-directional radio beacon (NDB), cancellation of the NDB approach and removal of the reference to the Shreveport VHF Omni-Directional Radio Range Collocated Tactical Air Navigation (VORTAC). This proposed change would enhance the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 26, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2017–0298; Airspace Docket No. 17–ASW–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Ron Laster, Federal Aviation Administration, Contract Support, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5879.

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 extending up to and including 700 feet above the surface at Vivian Airport, Vivian, LA, to support IFR operations in standard instrument procedures at the airport.

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. Commenters 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–2017–0298/Airspace Docket No. 17–ASW–7.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see 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 Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

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 and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 modifying Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Vivian Airport. The segment within 1.4 miles each side of the 298° radial of the Shreveport VORTAC extending from the 6.3-mile radius to 7.5 miles northwest of the airport would be removed due to the decommissioning of the Vivian NDB, and cancellation of the NDB approach. The VOR approach was previously redesigned to use the Vivian NDB when the Shreveport VORTAC was changed to the Belcher VORTAC, but was never noted in the airspace description. This action would enhance the safety and management of the standard instrument approach procedures for IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

* * * * *

ASW LA E5 Vivian, LA [Amended]

Vivian Airport, LA

(Lat. 32°51′41″ N., long. 94°00′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Vivian Airport.

Issued in Fort Worth, Texas, on May 4, 2017.

Walter Tweedy,

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

[FR Doc. 2017–09664 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0614; FRL–9961–73–Region 4]

Air Plan Approval; North Carolina; Repeal of Transportation Facilities Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality through the Division of Air Quality on September 16, 2016, for the purpose of removing the statewide transportation facilities rules. The state provided a Clean Air Act section 110(l) noninterference demonstration for the removal of these rules. EPA is proposing to approve this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act.

DATES: Written comments must be received on or before June 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0614 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler can be reached via telephone at (404) 562–9222 or via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this issue of the **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: March 31, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–09540 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0116; FRL–9961–43–Region 4]

Air Plan Approval; Georgia: Heavy Duty Diesel Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia on January 25, 2016, for the purpose of removing the requirements for heavy duty diesel engines (HDDE), which bar the sale/lease or import in the State of Georgia of any new HDDE that were not certified by the California Air Resources Board to meet the emission standards of the California HDDE rules. The removal of this rule will prevent regulatory confusion and make it clear that the more stringent EPA emission standards for HDDE are applicable. EPA is proposing to approve this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act.

DATES: Written comments must be received on or before June 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0116 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler can be reached via telephone at (404) 562–9222 or via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: March 15, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–09494 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0584; FRL–9960–42–Region 10]

Air Plan Approval; ID, Updates to Incorporations by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the portions of Idaho's April 28, 2016 State Implementation Plan submittal (SIP submittal) that update the incorporation by reference of federal air quality regulations. We note that this action does not address the changes Idaho withdrew related to transportation conformity requirements.

DATES: Comments must be received on or before June 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2016–0584, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Randall Ruddick, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave., Suite 900, Seattle, WA 98101; telephone number: (206) 553–1999; email address: *ruddick.randall@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. The EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule.

If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all adverse comments in a subsequent final rule based on this proposed rule, but will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 7, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017–09543 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 82, No. 91
Friday, May 12, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee To Discuss Civil Rights Topics in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a meeting on Thursday, June 1, 2017, at 2:00 p.m. CDT for the purpose of Committee orientation and a discussion on civil rights topics affecting the state.

DATES: The meeting will be held on Thursday, June 1, 2017, at 2:00 p.m. CDT.

Public Call Information: Dial: 888–452–4023, Conference ID: 5195407.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–452–4023, conference ID: 5195407. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link (*https://database.faca.gov/committee/committee.aspx?cid=260&aid=17*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Orientation
Civil Rights Topics in Nebraska
Next Steps
Public Comment
Adjournment

Dated: May 9, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–09666 Filed 5–11–17; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Monthly Retail Surveys (Formerly Monthly Retail Trade Survey (MRTS) and Advance Monthly Retail Trade Survey (MARTS)).

OMB Control Number: 0607–0717.

Form Number(s): MRTS: SM–44(17) S, SM–44(17) SE, SM–44(17) SS, SM–44(17) B, SM–44(17) BE, SM–44(17) BS, SM–45(12) S, SM–45(12) SE, SM–45(12) SS, SM–45(12) B, SM–45(12) BE, SM–45(12) BS, SM–72(17) S, and SM–20(17) I. MARTS: SM–44(17) A, SM–44(17) AE, SM–44(17) AS, and SM–72(17) A.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 12,000.

Average Hours per Response: 7 minutes.

Burden Hours: 16,799.

Needs and Uses: The Census Bureau plans to request a revision of the current Office of Management and Budget clearance for the surveys known as the Monthly Retail Trade Survey (MRTS) and the Advance Monthly Retail Trade Survey (MARTS). The MRTS and MARTS are related collections sharing the same initial sampling frame and jointly collect data that are published in conjunction with each other. These two surveys, currently cleared separately under control numbers 0607–0717 and 0607–0104, respectively, will therefore be combined under one control number and will be collectively called the Monthly Retail Surveys (MRS).

The MRS are administered monthly to a sample of employer firms (*i.e.,* businesses with paid employees) with establishments located in the United States and classified in retail trade and/or food services sectors as defined by the North American Industry Classification System (NAICS).

The MRTS provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States. In addition, the survey also provides an estimate of monthly sales at food service establishments and drinking places.

Sales, inventories, and e-commerce data provide a current statistical picture of the retail portion of consumer activity. The sales and inventories

estimates in the MRTS measure current trends of economic activity that occur in the United States. The survey estimates provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis. The Bureau of Economic Analysis (BEA) uses these data in determining the consumption portion of Gross Domestic Product (GDP).

The MARTS, a subsample of MRTS, began in 1953 as a monthly survey for activity taking place during the previous month. MARTS was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity in the United States. Retail sales are one of the primary measures of consumer demand for both durable and non-durable goods. MARTS also provides an estimate of monthly sales at food service establishments and drinking places.

Retail and Food Services Sales during 2016 were estimated at $5.5 trillion. The estimates produced in the MRS are critical to the accurate measurement of total economic activity. The estimates of retail sales represent all operating receipts, including receipts from wholesale sales made at retail locations and services rendered as part of the sale of the goods, by businesses that primarily sell at retail. The sales estimates include sales made on credit as well as on a cash basis, but exclude receipts from sales taxes and interest charges from credit sales. Also excluded is non-operating income from such services as investments and real estate.

The estimates of merchandise inventories owned by retailers represent all merchandise located in retail stores, warehouses, offices, or in transit for distribution to retail establishments. The estimates of merchandise inventories exclude fixtures and supplies not held for sale, as well as merchandise held on consignment owned by others. The Bureau of Economic Analysis (BEA) use inventories data to determine the investment portion of the Gross Domestic Product (GDP). We publish retail sales and inventories estimates based on the NAICS.

Retail e-commerce sales are estimated from the same sample used to estimate preliminary and final U.S. retail sales. For coverage of the universe of e-commerce retailers, research was conducted to ensure that retail firms selected in the MRTS sample engaged in e-commerce. Total e-commerce sales for 2016 were estimated at $395 billion.

Sales data for select industries are released in the press release ''Advance Monthly Sales for Retail Trade and Food Services,'' approximately 10 business days after the close of the reference month, which also includes more detailed estimates for the prior month. Advance inventory estimates for 3 aggregate levels are released in the ''Advance Economic Indicator Report'' approximately 19 business days after the close of the reference month and the preliminary estimates for inventories data are released in the ''Manufacturing and Trade Inventories and Sales'' approximately 43 days after the reference month. E-commerce sales estimates are released quarterly as part of the ''Quarterly Retail Ecommerce Sales'' report, approximately 45 days following the reference period.

Each MRS form has two versions; one with an ''E'' suffix and one with an ''A'' Suffix. The forms are identical, except that those with the ''E'' suffix are sent to smaller firms (which we refer to internally as ''EINs''), while those with the ''A'' suffix are sent to larger firms, which we refer to internally as ''alphas''. Thus, there are a total of 36 variants of forms along with their fax counterparts. Forms can be found at *https://www.census.gov/retail/get_forms.html.*

Please note that with the start of mailing for our next business sample revision for the December 2017 statistical period, we will be removing the leased department forms: SM–45(17) S, SM–45(17) SE, SM–45(17) SS, SM–45(17) B, SM–45(17) BE, and SM–45(17) BS.

The U.S. Census Bureau tabulates the collected data to provide, with measured reliability, statistics on United States retail sales. These estimates are especially valued by data users because of their timeliness.

The sales estimates are used by the Bureau of Economic Analysis (BEA), Council of Economic Advisers (CEA), Federal Reserve Board (FRB), Bureau of Labor Statistics (BLS), and other government agencies, as well as business users in formulating economic decisions.

BEA is the primary Federal user of data collected in the Monthly Retail Surveys. BEA uses the information in its preparation of the National Income and Products Accounts (NIPA), and its benchmark and annual input-output tables. Data on retail sales are used to prepare monthly estimates of the personal consumption expenditures (PCE) component of gross domestic product for all PCE goods categories, except tobacco, prescription drugs, motor vehicles, and gasoline and other motor fuel. These estimates are also published each month in the Personal Income and Outlays press release. If the survey were not conducted, BEA would lack comprehensive data from the retail sector. This would adversely affect the reliability of the NIPA and GDP. Production of the NIPA figures also require inventory figures in order to publish the monthly inventory to sales ratios. Additionally, they use MRS inventory figures to measure changes in inventories for estimates of gross output in the annual Input-Output Accounts tables, as well as for computing annual and quarterly GDP-by-industry statistics.

The Bureau of Labor Statistics (BLS) uses the data as input to their Producer Price Indexes and in developing productivity measurements. The data are also used for gauging current economic trends of the economy. BLS uses the estimates to develop consumer price indexes used in inflation and cost of living calculations.

CEA, other government agencies, and businesses use the survey results to formulate and make decisions. CEA reports the retail data, one of the principal federal economic indicators, to the President each month for awareness on the current picture on the ''state of the economy''. In addition, CEA's Macroeconomic Forecaster uses the retail sales data, one of the key monthly data releases each month, to keep track of real economic growth in the current quarter.

Policymakers such as the FRB need to have the timeliest estimates in order to anticipate economic trends and act accordingly.

Private businesses use the retail sales and inventories data to compute business activity indexes. The private sector also uses retail sales as a reliable indicator of consumer activity. In addition, businesses use the estimates to measure how they are performing and predict future demand for their products.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

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

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

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

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–09685 Filed 5–11–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open public meeting via webinar.

SUMMARY: The Hydrographic Services Review Panel (HSRP) will hold a public meeting to discuss the draft National Charting Plan and other related topics on navigation services such as: The draft External Source of Data for Nautical Charting; the draft OCS Autonomous Systems Strategy; and the draft Coast Survey Hydrographic Plan. Public comments are requested. The HSRP meeting agenda, webinar and background documents can be found online at: *https://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

DATES: The meeting webinar is scheduled for June 9, 2017, 1–4 p.m. Eastern Time. The agenda and times are subject to change. For updates, please check online at: *https://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

Webinar Information: This can be found online at: *https://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/NSD), 1315 East-West Highway, SSMC3 #6862, Silver Spring, Maryland 20910; telephone: 301–713–2750 ext. 166; email: *Lynne.Mersfelder@noaa.gov.*

SUPPLEMENTARY INFORMATION: The HSRP public meeting will be conducted via webinar and public comment is encouraged. A public comment period is scheduled during the webinar and will be noted in the agenda. Each individual or group making verbal comments will be limited to a total time of five (5) minutes and will be recorded. Individuals who would like to submit written statements in advance, during or after the meeting should email their comments to *Lynne.Mersfelder@noaa.gov.* Pre-registration is required to access the webinar and to make public comments. Additional information on the webinar is available from *Lynne.Mersfelder@noaa.gov* or online at: *https://www.nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The charter and other information are located online at: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/CharterBylawsHSIAStatute.htm.* Past HSRP public meeting summary reports, presentations, transcripts, and other information is available online at: *https://www.nauticalcharts.noaa.gov/ocs/hsrp/meetings.htm.*

Matters To Be Considered: The panel is convening to discuss four draft documents relevant to NOAA's navigation services. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, coastal mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, and marine modeling. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. Other matters may be considered. The agenda is subject to change.

Special Accommodations: This meeting is accessible to people with disabilities. Please direct requests to *Lynne.Mersfelder@noaa.gov* by June 2, 2017.

Dated: May 3, 2017.

Shepard Smith,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2017–09642 Filed 5–11–17; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF341

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental To Conducting Subsea Cable Operations and Maintenance Activities in the Arctic Ocean

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

ACTION: Proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from Quintillion Subsea Operations, LLC (Quintillion) for authorization to take marine mammals incidental to conducting subsea cable-laying and maintenance activities in the Beaufort, Bering, and Chukchi seas. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than June 12, 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.Guan@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/research.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: Shane Guan, Office of Protected

Resources, NMFS, (301) 427–8401. Electronic copies of the applications 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.* 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 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.

NMFS has defined unmitigable adverse impact in 50 CFR 216.103 as an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

NMFS prepared the Final Environmental Assessment for the Issuance of an Incidental Harassment Authorization for the Take of Marine Mammals by Harassment Incidental to the Alaska Phase of the Quintillion Subsea Project in the U.S. Arctic Ocean (2016 EA) and issued a Finding of No Significant Impact (FONSI) for the issuance of an IHA to Quintillion in 2016. After reviewing and considering (1) the Quintillion's 2017 IHA application, (2) the 2016 EA and FONSI, and (3) 2016 Quintillion monitoring report, NMFS preliminarily determined the issuance of an IHA to Quintillion for its 2017 activities falls within the scope of the analysis in the 2016 EA. NMFS preliminarily determined issuance another IHA to Quintillion would not result in significant adverse effects, individually or cumulatively, on the human environment. As such, NMFS preliminarily determined the issuance of an IHA to Quintillion does not require the preparation of a Supplemental Environmental Assessment.

NMFS' 2016 EA is available at *www.nmfs.noaa.gov/pr/permits/incidental/research.*

We will review all comments submitted in response to this notice prior to concluding our NEPA processor making a final decision on the IHA request.

Summary of Request

On November 18, 2016, Quintillion submitted an IHA application and marine mammal mitigation and monitoring plan (4MP) for the taking of marine mammal species incidental to conducting subsea cable-laying and operation and maintenance (O&M) activities in the Beaufort, Bering, and Chukchi seas. After receiving NMFS comments on the initial application, Quintillion made revisions to its IHA application on December 20, 2016, and January 23, 2017. NMFS determined that the application and the 4MP were adequate and complete on February 13, 2017.

The request continues work conducted in the 2016 open-water season, which was covered under a previous IHA (81 FR 40274; June 21, 2016).

Noise generated from cable-laying and associated maintenance and repair activities could impact marine mammals in the vicinity of the activities. Take, by Level B harassment, of individuals of 13 species of marine mammals is proposed to be authorized from the specified activity. No mortality or Level A harassment is expected or proposed.

Description of Proposed Activity

Overview

In 2016, Quintillion installed substantial portions of a subsea fiber-optic cable network along the northern and western coasts of Alaska to provide high speed Internet connectivity to six rural Alaska communities. In 2017, Quintillion plans to complete the cable installation work that includes a 76-kilometer (km) (47-mile (mi)) Oliktok branch, system testing, branching unit (BU) burial, and operations and maintenance of any areas that do not meet testing requirements.

Dates and Duration

The proposed subsea cable installation, maintenance, and repair activities for the 2017 open water season are planned between July 1 and November 15. All associated activities, including mobilization, cable lay, and demobilization of survey and support crews, will occur between the above dates. Pre-trenching operations at the Oliktok branch will begin as soon as the cable vessels can access open water.

Specified Geographic Region

The proposed cable-laying activities in the 2017 open-water season would be conducted between the Horizontal Directionally Drilled (HDD) pile and the Oliktok BU in coastal Beaufort Sea, as shown in Figure 1–2 of the IHA application.

Operations, maintenance, and repair activities could occur anywhere along the subsea cable lines within the Bering, Chukchi, and Beaufort seas. All areas along the subsea cable lines were considered in the 2016 EA. The existence and location of any potential faults in the system is unknown at this

time. If a fault is found, a section of the cable would be retrieved, repaired, and laid back down. Several BUs, located at the junction of the mainline and a branching route, were not buried in 2016. They will be buried in 2017, with protective concrete mattresses placed over them.

Detailed Description of Specific Activities

Quintillion intends to complete the 76-km (47-mi) Oliktok segment in summer 2017 using a variety of cable-lay equipment, depending on water depth. The branch line will be addressed in three sections:

Section 1: An approximately 6.0-km (3.7-mi) very shallow nearshore segment (from the HDD exit to approximately Kilometer Point (KP) 6.5) where trenching will occur using a construction barge equipped with a vibro plow. The barge will winch itself along the route using moored anchors. The moored anchors will be first placed by a pontoon barge that will be positioned in place with a small river tug. The moorings will be placed with a derrick operating from the deck of the barge. The pontoon barge will also be used to retrieve the mooring after the cable is laid. Dominant noise will emanate from the river tug maneuvering the barges. The tug will not pull anchors along this section.

Section 2: An approximately 12.5-km (7.8-mi) transition section (KP 6.5 to KP 16) where the work will be conducted from the construction barge again using a vibro plow. Here the barge will winch along anchor lines as within Section 1, but the anchors will be placed and pulled by a midsize anchor-handling tug, which will produce the dominant noise along this section.

Section 3: An approximately 60-km (37-mi) offshore section (KP 16 to KP 76) where the cable will be laid by the cable-ship *Ile de Batz* using a sea plow that both cuts a trench and lays the cable.

Prior to cable-laying, seafloor sediment along the 60-km route segment will be loosened by making multiple passes of the route with the sea plow (sans the cable), set to varied depths. The dominant noise will be from the ship's drive propeller and thrusters while pulling the plow.

In addition to the activities described above, Quintillion plans to conduct an O&M program in 2017, whereby the cable system is tested for faults and repaired as needed (using the *Ile de Batz*). Repair operations would involve retrieving, reinstalling, and then potentially reburying cable. The amount of cable that would need to be retrieved is dependent on water depth and could involve several kilometers for each fault repair. If required, the cable would then be reburied using a remove operated vehicle (ROV) equipped with a jetting tool. BUs will be buried after the Oliktok branch cable is laid, or before if ice delays the *Ile de Batz* access to the branch. O&M activities may also include testing of equipment, including the sea plow, prior to pre-trenching to ensure performance standards will be met.

Vessels

The 2016 offshore (waters >12 meters (m); >39 ft feet (ft) deep) cable-lay operations were conducted by the *Ile de Brehat* and its sister ship the *Ile de Sein.* The third sister of the Alcatel cable ships, the *Ile de Batz,* will be used in the 2017 operations. As with the sister ships, the *Ile de Batz* is 140 m (460 ft) in length, 23 m (77 ft) in breadth, and is propelled by two 4,000 kilowatt (kW) fixed-pitch propellers.

The ship will be used to pull the sea plow during cable-lay operations along Section 3 of the Oliktok route, and it will also be used during any cable retrieval and reburial operations during O&M activities (including pre-burial testing of the plow), and during post-lay inspection (PLI), post-lay burial (PLB), and mattressing operations.

Prior to laying cable along Section 3 of the Oliktok route, the *Ile de Batz* will also prepare the seafloor for cable lay by making several passes along the route with the sea plow. This would include a 60-km pass with the plow set to 2 m deep, a 23-km pass with the plow set to 3-m depth, and two 17-km passes set to 4-m depth, followed by actual laying of 60 km of cable. Thus, the *Ile de Batz* will make five passes of varied length, totaling 187 km (116 mi), along Section 3.

During pre-trenching and cable-lay operations the *Ile de Batz* will be tendered by the 200-ft *MV Discovery.* The purpose of this ship is to retrieve parts and supplies as needed, and monitor for approaching ice. Most of the time it will lay idle near *Ile de Batz* and will not be producing loud cavitation noises except in emergency situations.

Section 1 of the Oliktok branch will be trenched using a vibro plow attached to a construction barge (the 250-ft *Miller Bay*). Because Section 1 is too shallow for an ocean-class anchor-handling tug to operate, a series of moored anchors will be first placed along this 6 km route, which the barge will use to winch long the route pulling the vibro plow. The moorings will be placed using a shallow-draft river tug (88-ft *Dana Cruz*) and the moorings set, and later retrieved, using a derrick operating from the barge deck (the river tug would be too small to handle the moorings involved).

The construction barge will continue to lay cable along Section 2 using the vibro plow, with the only difference being that in this section the water is deep enough for the larger anchor-handling tug (95-ft *Daniel Foss*), which will place and retrieve anchors that the barge will use to winch along the cable route.

Cable-Lay Tools

The 2017 operations will use various cable-lay tools depending on location and water depth. Cable along Sections 1 and 2 will be laid using a vibro plow pulled by the winching barge. As the name suggests, the tool has a narrow plowshare that vibrates into the seafloor sediment. Maximum trenching/winching speed is less than 0.1 kilometer per hour (kph) (<0.06 miles per hour [mph]).

Pre-trenching and cable lay along Section three will involve the *Ile de Batz* pulling a heavy-duty sea plow. The plow has a submerged weight of 25 tonnes (27.6 tons) and is pulled by the tow wire and the cable fed through a cable depressor that pushes it into the trench. Burial depth (generally set at 4 m) is controlled by adjusting the front skids. The nominal tow speed is approximately 0.6 kph (0.4 mph).

Once cable-laying of the Oliktok segment is completed, exposed BUs will be buried, and the entire system (main trunk and 6 branch lines) will be tested. If any system faults are detected, fault repair (O&M) would include retrieving a cable section, repairing it aboard the *Ile de Batz,* and, if required, reburying the cable using a jetted ROV. The planned ROV (ROVJET 400 series) is 5.8 m (19.0 ft) long and 3.4 m (11.2 ft) wide, and weighs 9.1 tonnes (10 tons), and has both a main and forward jet tool capable of trenching to 2 m (6.6 ft) depth. The ROV will also be used to bury any BUs not buried in 2016, and to place the protective concrete mattresses over them.

Quintillion does not intend to conduct operations in the vicinity of sea ice greater than 1/10 concentration.

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

We have reviewed the Quintillion's species information, which summarizes available information regarding status and trends, distribution and habitat

preferences, behavior and life history, and auditory capabilities of the potentially affected species, for accuracy and completeness and refer the reader to Sections 3 and 4 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting all of the information here. Additional 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/*), in the National Marine Mammal Laboratory's (NMML) Aerial Surveys of Arctic Marine Mammals (ASAMM) Web site (*https://www.afsc.noaa.gov/nmml/cetacean/bwasp/*). Table 1 lists all species with expected potential for occurrence in the U.S. Beaufort, Bering, and Chukchi seas and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats. Species that could potentially occur in the proposed survey areas but are not expected to have reasonable potential to be harassed by the proposed subsea cable-laying and maintenance activities are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

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 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.

Fifteen marine mammal species (with 18 managed stocks) are considered to have the potential to co-occur with the proposed survey activities. However, polar bear and walrus are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. All managed stocks in this region are assessed in NMFS's U.S. Alaska SAR (Muto *et al.,* 2016). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2015 SAR (Muto *et al.,* 2016) and draft 2016 SARs (available online at: *www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE SURVEY AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	20,900	624	132
Family Balaenidae						
Bowhead whale.	*Balaena mysticetus*	Western Arctic	Y	16,892	161	44
Family Balaenopteridae (rorquals)						
Fin whale	*Balaenoptera physalus*	Northeast Pacific	Y	NA	NA	0.6
Minke whale ...	*B. acutorostrata*	Alaska	N	NA	NA	0
Humpback whale.	*Megaptera novaeangliae*	Central North Pacific	Y	10,103	83	24
		Western North Pacific	Y	1,107	3.0	2.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Beluga whale ..	*Delphinapterus leucas*	Beaufort Sea	N	39,258	649	166
		Eastern Chukchi Sea	N	3,710	NA	57.4
		Eastern Bering Sea	N	19,186	NA	181
Killer whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	N	2,347	24	1
Family Phocoenidae (porpoises)						
Harbor porpoise.	*Phocoena phocoena*	Bering Sea	N	48,215	NA	0.4

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE SURVEY AREA—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller sea lion	*Eumetopias jubatus*	Western U.S.	Y	50,983	306	201
Family Phocidae (earless seals)						
Ringed seal	*Phoca hispida*	Alaska	Y	NA	NA	1,062
Spotted seal	*Phoca largha*	Alaska	N	460,268	11,730	5,267
Bearded seal	*Erigathus barbatus*	Alaska	Y	NA	NA	443
Ribbon seal	*Histriophoca fasciata*	Alaska	N	184,000	9,785	3.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic Effects

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

Marine Mammal Hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with 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.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information.

Thirteen marine mammal species (eight cetacean and five pinniped (one otariid and four phocid) species) have

the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), two are classified as mid-frequency cetaceans (*i.e.,* all delphinid), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

The proposed Quintillion subsea cable-laying and maintenance activities could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, 2015). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 decibels (dB) or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher sound pressure level (SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of Quintillion's subsea cable-laying operation, NMFS does not expect that animals would experience levels high enough or durations long enough to result in TS given that the noise levels from the operation are very low.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran, 2015). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak, *et al.,* 1999; Finneran, 2015).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received SPL at 200.2 dB (peak-to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which PTS could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re: 1 μPa threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran, 2015).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Masking. In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al,.* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore,

since noises generated from anchor handling, pre-trenching, and DP thrusters are mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping. All anthropogenic noise sources, such as those from vessel traffic and cable-laying while operating anchor handling, contribute to the elevated ambient noise levels, thus increasing potential for or severity of masking.

Behavioral Disturbance. Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007). Currently NMFS uses a received level of 160 dB re 1 µPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 µPa (rms) for continuous noises (such as operating DP thrusters). No impulse noise within the hearing range of marine mammals is expected from the Quintillion subsea cable-laying operation. For the Quintillion subsea cable-laying operation, only the 120 dB re 1 µPa (rms) threshold is considered because only continuous noise sources would be generated.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Effects on Marine Mammal Habitat

Project activities that could potentially impact marine mammal habitats include physical and acoustical impacts to prey resources associated with cable-laying, maintenance, and repair activities. Regarding the former, however, acoustical injury from thruster noise is unlikely. Previous noise studies (*e.g.,* Davis *et al.,* 1998, Christian *et al.,* 2004) with cod, crab, and schooling fish found little or no injury to adults, larvae, or eggs when exposed to impulsive noises exceeding 220 dB. Continuous noise levels from ship thrusters are generally below 180 dB, and do not create great enough pressures to cause tissue or organ injury. Nedwell *et al.* (2003) measured noise associated with cable trenching operations offshore of Wales, and found that levels (178 dB at source) did not exceed those where significant avoidance reactions of fish would occur.

Cable burial operations involve the use of plows or jets to cut trenches in the seafloor sediment. Cable plows are generally used where the substrate is cohesive enough to be ''cut'' and laid alongside the trench long enough for the cable to be laid at depth. In less cohesive substrates, where the sediment would immediately settle back into the trench before the cable could be laid, jetting is used to scour a more lasting furrow. The objective of both is to excavate a temporary trench of sufficient depth to fully bury the cable (usually 1.5 to 2 m (4.9 to 6.6 ft)). The plow blade is 0.2 m (0.7 ft) wide producing a trench of approximately the same width. Jetted trenches are somewhat wider depending on the sediment type.

Potential impacts to marine mammal habitat and prey include: (1) Crushing of benthic and epibenthic invertebrates with the plow blade, plow skid, or ROV track; (2) dislodgement of benthic invertebrates onto the surface where they may die; and (3) and the settlement of suspended sediments away from the trench where they may clog gills or feeding structures of sessile invertebrates or smother sensitive species (BERR 2008). However, the footprint of cable trenching is generally restricted to a 2- to 3-m (7- to 10-ft) width (BERR, 2008), and the displaced wedge or berm is expected to naturally backfill into the trench. Jetting results in more suspension of sediments, which may take days to settle during which currents may transport it well away (up to several kilometers) from source. Suspended sand particles generally settle within about 20 m (66 ft).

BERR (2008) critically reviewed the effect of offshore wind farm construction, including laying of power and communication cables, on the environment. Based on a rating of 1 to 10, they concluded that sediment disturbance from plow operations rated the lowest at 1, with jetting rating from 2 to 4, depending on substrate. As a comparison, dredging rated the highest relative sediment disturbance.

However, with the exception of the 76-km (47-mi) Oliktok branch, all cable planned for burial was buried in 2016, and any BU burial or O&M activities conducted in 2017 will just be re-disturbing areas previously disturbed.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of 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 noise sources generated during the proposed subsea cable-laying and maintenance activities. Based on the nature of the activity, Level A harassment is neither

anticipated nor proposed to be authorized. An evaluation was performed using NMFS noise exposure guidance which confirms that no Level A takes would occur (see below).

The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Basis for Takes

Take estimates are based on average marine mammal density in the project area multiplied by size of the area ensonified by received noise levels exceed certain thresholds (*i.e.,* Level A and/or Level B harassment) from specific activities. This is the preferred method for estimating instances of take for a project where the noise source is constantly moving (not remaining at specific location for long periods). For marine mammals whose density information is not available, take calculation is based on qualitative information of these species occurrence and presence and on prior observations within the survey area.

Acoustic Thresholds

Under the NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance), dual criteria are used to assess marine mammal auditory injury (Level A harassment) as a result of noise exposure (NMFS 2016). The dual criteria under the Guidance provide onset thresholds in instantaneous peak SPLs (L_{pk}) as well as 24-hr cumulative sound exposure levels (SEL_{cum} or L_E) that could cause PTS) to marine mammals of different hearing groups. The peak SPL is the highest positive value of the noise field, log transformed to dB in reference to 1 micropascal (µPa).

$$L_{pk} = \max\left\{10\log_{10}\left(\frac{p(t)}{p_{ref}}\right)^2\right\} \quad (1)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, and P_{ref} is reference acoustic pressure equal to 1 µPa.

The cumulative SEL is the total sound exposure over the entire duration of a given day's project underwater noise production.

$$L_E = 10\log_{10}\left(\int_{t_1}^{t_2}\left(\frac{p(t)}{p_{ref}}\right)^2 dt\right) \quad (2)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, P_{ref} is reference acoustic pressure equals to 1 µPa, t_1 marks the beginning of the time, and t_2 the end of time.

For onset of Level B harassment, NMFS continues to use the root-mean-square (rms) sound pressure level (SPL_{rms}) 120 dB re 1 µPa as the received level from non-impulse sources (such as those produced by machineries during anchor handling, pre-trenching, and cable-laying with DP thruster and sea plow associated with the proposed subsea cable-laying and maintenance) underwater. The SPL_{rms} for non-impulse sounds is the same as the sound exposure level normalized in 1 sec, and is calculated by

$$SPL_{rms} = 10\log_{10}\left(\frac{1}{T}\int_{t_1}^{t_2}\left(\frac{p(t)}{p_{ref}}\right)^2 dt\right) \quad (3)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, P_{ref} is reference acoustic pressure equals to 1 µPa, t_1 marks the beginning of the time, and t_2 the end of time. In the case of a non-impulse noise, T is duration of noise exposure between t_1 and t_2.

Table 2 summarizes the current NMFS marine mammal take criteria.

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.		
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	$L_{rms,flat}$: 160 dB	$L_{rms,flat}$: 120 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.		

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER—Continued

Hearing group	PTS onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB ..... $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa_2s. 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.

Noise Sources and Ensonified Areas

The predominant noise source during previous cable-lay operations at other locations has been the cavitation noise produced by thrusters during dynamic positioning of the vessel (Tetra Tech 2013). Cavitation is the random collapsing of bubbles produced by the blades. However, Illingworth & Rodkin (I&R 2016) conducted sound source verification (SSV) measurements of the *Ile de Brehat* while operating near Nome at the beginning of the 2016 field season and found that the primary noise source emanated from the drive propellers while towing the sea plow. Resistant seafloor sediments resulted in a need to increase power (resulting in increased cavitation) as compared to cable-lay operations at other locations.

I&R (2016) determined that the distance to the NMFS Level B harassment threshold 120 dB re 1 µPa (rms) for continuous noise was 5.35 km (3.32 mi) when the *Ile de Brehat* was pulling the sea plow. It is assumed that the same measurements apply for the sister ship *Ile de Batz* that will pull the sea plow during cable-lay operations in the offshore segment of the Oliktok branch.

In addition to sea plow operations (which includes pre-trenching), cavitation noise potentially exceeding the NMFS Level B harassment threshold of 120 dB re 1 µPa (rms) for continuous noise is expected during anchor-handling operations.

Results from past measurements of cavitation noise associated with anchor handling have varied greatly with distances to the 120-dB isopleth ranging from a few kilometers to over 25 km (16 mi), depending on the size of both the tug and the anchor, and the amount of power needed to retrieve the anchor. Source levels for large (45 to 83 m (148 to 272 ft) in length) anchor-handling tugs during anchor-pulling operations have been measured at been 181 and 207 dB re 1 µPa (rms) (Laurinolli *et al.* 2005, Austin *et al.* 2013, LGL/JASCO/Greeneridge 2014). However, smaller (<35 m [<115 ft]) tugs produce underwater noise levels <180 dB re 1 µPa (rms) when pulling (Richardson *et al.* 1995, Blackwell and Greene 2003). Blackwell and Greene (2003) measured the underwater noise levels from a tug maneuvering a large barge near the Port of Anchorage and recorded maximum sound pressure levels equating to 163.8 dB re 1 µPa (rms) at 1-m source when the tug was pushing the barge, which increased to 178.9 dB re 1 µPa (rms) when thrusters were additionally operated during docking maneuvers. Quintillion intends to use the 27-m (88-ft) *Dana Cruz* and the 29-m (95-ft) *Daniel Foss* tugs to handle anchors. In the absence of sound source data for these smaller tugs it is assumed that each would have a source level of 178.9 dB re 1 µPa (rms) based on Blackwell and Greene (2003), which would imply a radius to threshold of about 8.45 km (5.25 mi) based on a 15 Log (R) spreading model.

During O&M activities (including burying BUs) the primary noise source will be the vessel (*Ile de Batz*) thrusters when using dynamic positioning to remain on station. There will be noise associated with the ROV propulsion and jetting, but these are expected to be subordinate to thruster noises. Various acoustical investigations of thruster noise in the Atlantic Ocean have modeled distances to the 120-dB isopleth with results ranging between 1.4 and 4.5 km (0.8 and 2.7 mi) (Samsung 2009, Deepwater Wind 2013, Tetra Tech 2013) for water depths similar to those where Quintillion will be operating in the Chukchi and Beaufort seas. However, Hartin *et al.* (2011) physically measured dynamic positioning noise from the 104-m (341-ft) *Fugro Synergy* operating in the Chukchi Sea while it was using thrusters (2,500 kW) more powerful than those used on the *Ile de Brehat* (1,500 kW). Measured dominant frequencies were 110 Hz to 140 Hz, and the measured (90th percentile) radius to the 120-dB isopleth was 2.3 km (1.4 mi). Because this radius is a measured value from Alaska Arctic waters, it likely is a better approximation of expected sound levels associated with thruster operation during O&M activities.

Other acoustical sources include the echo sounders, transceivers, sonar, and transponders that will be used to continually reference the water depth and the position of the plow and ROV that operate behind the vessel. Based on actual field measurements or manufacturer-provided values, some of this equipment produces noise levels exceeding the vessel thrusters. However, this equipment is impulsive, producing pulses every 1 to 3 seconds (sec), and the sound energy is focused downward in very narrow conical beams. There is very little horizontal propagation of the noise levels. Measured distances to the 160-dB isopleth for echo sounders and acoustical beacons ranged between 26 and 44 m (85 and 144 ft) (Ireland *et al.,* 2007, Reider *et al.,* 2013). I&R (2016) attempted to measure echo sounder and transponder sound levels associated with the *Ile de Brehat,* but could not detect them, even at a very close range to the ship. They assumed that this was due to the downward focus and lack of horizontal spread of the sound beam.

As mentioned earlier, Quintillion's 2017 activities will include installing cable on the remaining approximately 76 km (47 mi) of the Oliktok branch cable. Quintillion will then test the system to identify any faults. Until testing is complete, it is not possible to know how much retrieval and reburial of cable will be necessary during O&M activity in 2017. To account for this uncertainty, the acoustical footprint (total ensonified area) for purposes of

this application was determined by conservatively assuming that cavitation noise would occur along all remaining 76 km (47 mi) of carry-over cable-lay operations (Oliktok branch), and 100 km (62 mi) of potential O&M work in either the Bering or Chukchi seas. Table 3 lists the area ensonified by underwater sound exceeding 120 dB re 1 µPa (rms) associated with each activity.

TABLE 3—ESTIMATED DISTANCE OF THE LEVEL B HARRASSMENT THRESHOLD (120 dB) FOR EACH OF QUINTILLION'S PROPOSED 2017 CABLE-LAY ACTIVITIES AND THE LENGTH OF ROUTE OVER WHICH THESE ACTIVITIES WOULD OCCUR

Operation	Season	Water body	Distance to 120-dB (km)	Route length (km)	Ensonified area (km^2)
Sea plow (pre-trenching & cable-laying by *Ile de Batz*)	Summer	Beaufort	5.35	187	2,001
Anchor handling (in association of cable-laying by barges)	Summer	Beaufort	8.45	16	270
ROV (O&M)	Fall	Bering & Chukchi	2.30	100	460

It is assumed that the pre-trenching and cable-laying work in the Beaufort Sea will occur only in the summer (July and August) with a collective zone of influence (ZOI) of 2,271 km^2. It is assumed that the remaining O&M activities in the Bering and Chukchi seas (ZOI of 460 km^2) would occur in the fall, although some burying of BUs and equipment testing might occur in the summer if the Oliktok area is not yet free of ice when the *Ile de Batz* arrives.

For Level A harassment zones, calculations were performed using NMFS optional spreadsheet (NMFS 2016) for mobile source: Non-impulse source with input from various sources listed above. The results show that distances to the PTS isopleths for the five hearing groups from various sources ranged from 0 to 4 m. Consequently, there are no Level A concerns for this project.

Marine Mammal Densities

Density estimates for bowhead, gray, and beluga whales were derived from aerial survey data collected in the Chukchi and Beaufort seas during the 2011 to 2016 Aerial Surveys of Arctic Marine Mammals (ASAMM) program (Clarke *et al.,* 2012, 2013, 2014, 2015, NMFS Unpubl. Data). The proposed cable routes cross ASAMM survey blocks 3, 11, and 12 in the Beaufort Sea, and blocks 13, 14, 18, 21, and 22 in the Chukchi Sea. Only data collected in these blocks were used to estimate densities for bowhead and gray whales. Beluga densities were derived from ASAMM data collected for depth zones between 36 and 50 m (118 and 164 ft) within the Chukchi Sea between longitudes 157 ° and 169 °W, and the depth zones between 21 and 200 m (68.9 and 656.2 ft) in the Beaufort Sea between longitudes 154 ° and 157 °W. These depth zones reflect the depths where most of the cable-lay will occur. Harbor porpoise densities (Chukchi Sea only) are from Hartin *et al.* (2013), and ringed seal densities from Aerts *et al.* (2014; Chukchi Sea) and Moulton and Lawson (2002; Beaufort Sea). Spotted and bearded seal densities in the Chukchi Sea are also from Aerts *et al.* (2014). Spotted seal density in Beaufort Sea is based on Green and Negri (2005) and Green *et al.* (2006, 2007) surveys during barging activity between West Dock and Cape Simpson, and corrected using observations by Hauser *et al.* (2008) and Lomac-McNair *et al.* (2014) in areas closer to Oliktok (see below). Bearded seal density is estimated as 5 percent of ringed seals, based on studies by Stirling *et al.* (1982) and Clarke *et al.* (2013, 2014).

Too few sightings have been made in the Chukchi and Beaufort seas for all other marine mammal species to develop credible density estimates.

The density estimates for the seven species are presented in Table 4 (Chukchi and Bering seas) and Table 5 (Beaufort Sea) below. The specific parameters used in deriving these estimates are provided in the discussions that follow.

TABLE 4—MARINE MAMMAL DENSITIES (#/km^2) IN THE CHUKCHI AND BERING SEAS

Species	Summer	Fall
Bowhead whale	0.0035	0.0481
Gray whale	0.0760	0.0241
Beluga whale	0.0015	0.0090
Harbor porpoise	0.0022	0.0021
Ringed seal	0.0645	0.0380
Spotted seal	0.0645	0.0380
Bearded seal	0.0630	0.0440

TABLE 5—MARINE MAMMAL DENSITIES (#/km^2) IN THE BEAUFORT SEA

Species	Summer	Fall
Bowhead whale	0.1239	0.1285
Gray whale	0.0097	0.0034
Beluga whale	0.0778	0.0316
Ringed seal	0.3547	0.2510
Spotted seal	0.1171	0.0837
Bearded seal	0.0177	0.0125

Bowhead Whale: The summer density estimate for bowhead whales was derived from June, July, and August aerial survey data collected in the Chukchi and Beaufort seas during the 2011 to 2016 ASAMM program (Clarke *et al.,* 2012, 2013, 2014, 2015, NMFS Unpubl. Data). Fall data were collected during September and October. Data only from the survey blocks that will be crossed by the proposed cable route were used in the calculations, and included blocks 3, 11, and 12 in the Beaufort Sea and 13, 14, 18, 21, and 22 in the Chukchi Sea. ASAMM surveys did not extend more than about 25 km (15.5 mi) south of Point Hope, and there are no other systematic survey data for bowhead whales south of the point. During these three years, 478 bowhead whales were recorded in the three Beaufort Sea blocks during 23,955 km (14,885 mi) of summer survey effort (0.0200/km), and 684 whales during 33,056 km (20,054 mi) of fall effort (0.0207/km). In the five Chukchi Sea survey blocks, 23 bowheads were recorded during 41,373 km (25,708 mi) of summer effort (0.0006/km), and 302 during 39,015 km (24,243 mi) of fall survey (0.0077/km). Applying an effective strip half-width (ESW) of 1.15 (Ferguson and Clarke 2013), and a 0.07 correction factor for whales missed during the surveys, results in corrected densities of 0.1239 (Beaufort summer), 0.1285 (Beaufort fall), 0.0035 (Chukchi summer), and 0.0481 (Chukchi fall) whales per km^2 (Table 4 and Table 5).

Gray Whale: Gray whale density estimates were derived from the same ASAMM transect data used to determine bowhead whale densities. During the four years of aerial survey, 39 gray whales were recorded in the three Beaufort Sea blocks during 23,955 km (14,885 mi) of summer survey effort (0.0016/km), and 19 gray whales during 33,056 km (20,054 mi) of fall effort (0.0006/km). In the five Chukchi Sea survey blocks, 529 gray whales were recorded during 41,373 km (25,708 mi)

of summer effort (0.0128/km), and 158 during 39,015 km (24,243 mi) of fall survey (0.0040/km). Applying an effective strip half-width (ESW) of 1.201 (Ferguson and Clarke 2013), and a correction factor of 0.07, results in corrected densities of 0.0097 (Beaufort summer), 0.0034 (Beaufort fall), 0.0760 (Chukchi summer), and 0.0241 (Chukchi fall) whales per km^2 (Table 4 and Table 5).

Beluga Whale: Beluga whale density estimates were derived from the ASAMM transect data collected from 2011 to 2016 (Clarke *et al.,* 2012, 2013, 2014, 2015, 2016, NMFS Unpubl. Data). During summer aerial surveys (June–August), there were 376 beluga whale observed along 6,786 km (4,217 mi) of transect in waters between 21 to 200 m (13 to 124 ft) deep and between longitudes 154 °W and 157 °W. This equates to 0.0554 whales/km of trackline and a corrected density of 0.0778 whales per km^2, assuming an ESW of 0.614 km and a 0.58 correction factor. Fall density estimates (September–October) for this region were based on 239 beluga whales seen along 10,632 km (6,606 mi) of transect. This equates to 0.0225 whales/km of trackline and a corrected density of 0.0316 whales per km^2, assuming an ESW of 0.614 km and a 0.58 correction factor.

During summer aerial surveys (June–August), there were 40 beluga whale observed along 38,347 km (23,828 mi) of transect in waters less than 36 to 50 m (22 to 31 ft) deep and between longitudes 157 °W and 169 °W. This equates to 0.0010 whales/km of trackline and a corrected density of 0.0015 whales per km^2, assuming an ESW of 0.614 km and a 0.58 correction factor. Calculated fall beluga densities for the same region was based on 237 beluga whales seen during 36,816 km (22,876 mi) of transect. This equates to 0.0064 whales/km and a corrected density of 0.0090 whales per km^2, again assuming an ESW of 0.614 km and a 0.58 correction factor.

Harbor Porpoise: Although harbor porpoise are known to occur in low numbers in the Chukchi Sea (Aerts *et al.,* 2014), no harbor porpoise were positively identified during Chukchi Offshore Monitoring in Drilling Area (COMIDA) and ASAMM aerial surveys conducted in the Chukchi Sea from 2006 to 2013 (Clarke *et al.,* 2011, 2012, 2013, 2014). A few small unidentified cetaceans that were observed may have been harbor porpoise. Hartin *et al.* (2013) conducted vessel-based surveys in the Chukchi Sea while monitoring oil and gas activities between 2006 and 2010 and recorded several harbor porpoises throughout the summer and early fall. Vessel-based surveys may be more conducive to sighting these small, cryptic porpoise than the aerial-based COMIDA/ASAMM surveys. The Hartin *et al.* (2013) three-year average summer densities (0.0022/km^2) and fall densities (0.0021/km^2) were very similar, and are included in Table 4.

Ringed and Spotted Seals: Aerts *et al.* (2014) conducted a marine mammal monitoring program in the northeastern Chukchi Sea in association with oil and gas exploration activities between 2008 and 2013. For sightings of either ringed or spotted seals, the highest summer density was 0.127 seals/km^2 (2008) and the highest fall density was 0.076 seals/km^2 (2013). Where seals could be identified to species, they found the ratio of ringed to spotted seals to be 2:1. However, monitoring the cable-lay activity in 2016 showed a nearly 1:1 ratio for ringed and spotted seals in all Bering and Chukchi seas, with the exception of Kotzebue where high numbers of spotted seals were observed. Kotzebue is a fall concentration for feeding spotted seals. Because the cable-lay work at Kotzebue is complete, and any 2017 work there is either unlikely or would be brief, Kotzebue nearshore densities are not taken into special account in the overall estimated spotted seal density for the Bering and Chukchi seas. The 1:1 ratio observed in 2016 is taken into consideration by splitting the above Aerts *et al.* (2014) densities equally for each species: 0.064 seals/km^2 for summer and 0.038 seals/km^2 for fall. These are the densities used in the exposure calculations (Table 4) to represent ringed and spotted seal densities for both the northern Bering and Chukchi seas.

Moulton and Lawson (2002) conducted summer shipboard-based surveys for pinnipeds along the nearshore Alaska Beaufort Sea coast, while the Kingsley (1986) conducted surveys here along the ice margin representing fall conditions. The ringed seal results from these surveys were used in the exposure estimates (Table 4). Neither survey provided a good estimate of spotted seal densities. Green and Negri (2005) and Green *et al.* (2006, 2007) recorded pinnipeds during barging activity between West Dock and Cape Simpson, and found high numbers of ringed seal in Harrison Bay, and peaks in spotted seal numbers off the Colville River delta where a haulout site is located. Approximately 5 percent of all phocid sightings recorded by Green and Negri (2005) and Green *et al.* (2006, 2007) were spotted seals, which provide an estimate of the proportion of ringed seals versus spotted seals in the Colville River delta and Harrison Bay, both areas relatively close to the proposed Oliktok branch line. However, monitoring conducted nearer to Oliktok Point by Hauser *et al.* (2008) and Lomac-McNair *et al.* (2014) indicated that spotted seals are more commonly observed in waters nearest shore than ringed seals. While only a small portion of the Oliktok branch that remains to be installed occurs in waters within 5 km (3 mi) of shore, much of the work within 5 km (3 mi) will take more days of activity to complete than offshore work and, hence, could result in a disproportionately higher number of spotted seal sightings than existing survey data might predict. Therefore, as a conservative measure, the ringed seal density data from Moulton and Lawson (2002) and Kingsley (1986) is applied to both species, especially given the 2016 results indicate that outside Kotzebue, observers were reporting a nearly 3:1 ratio of both species.

Bearded Seal: The most representative estimates of summer and fall density of bearded seals in the northern Bering and Chukchi seas come from Aerts *et al.* (2014) monitoring program that ran from 2008 to 2013 in the northeastern Chukchi Sea. During this period the highest summer estimate was 0.063 seals/km^2 (2013) and the highest fall estimate was 0.044 seals/km^2 (2010). These are the values that were used in developing exposure estimates for this species for the northern Bering and Chukchi seas cable-lay areas (Table 4).

There are no accurate density estimates for bearded seals in the Beaufort Sea based on survey data. However, Stirling *et al.* (1982) noted that the proportion of eastern Beaufort Sea bearded seals is 5 percent that of ringed seals. Further, Clarke *et al.* (2013, 2014) recorded 82 bearded seals in both the Chukchi and Beaufort Seas during the 2012 and 2013 ASAMM surveys, which represented 5.1 percent of all their ringed seal and small unidentified pinniped sightings (1,586). Bengtson *et al.* (2005) noted a similar ratio (6 percent) during spring surveys of ice seals in the Chukchi Sea. Therefore, the density values in Table 3 were determined by multiplying ringed seal density from Moulton and Lawson (2002) and Kingsley (1986) by 5 percent.

Marine Mammal Take Calculations

As stated earlier in the document, ensonified distances to Level A harassment from various sources ranged from 0 to 4 m for all marine mammal hearing groups. It's highly unlikely that an animal will reach to this close distance to the vessel. Therefore, we

consider there is no concern for level A take.

The estimated potential harassment take of local marine mammals by the project was determined by multiplying the seasonal animal densities in Table 4 and Table 5 with the maximum seasonal area that would be ensonified by the estimated operational underwater noise greater than 120 dB re 1 µPa (rms) during each activity by each season (shown in Table 3). The resulting exposure calculations are provided in Table 6.

For marine mammals for which reliable density estimates do not exist in the project area (*i.e.,* humpback whale, fin whale, minke whale, killer whale, harbor porpoise, Steller sea lion, and ribbon seal) due to low abundance, potential exposures are based on recorded observations of these species in the recent past as discussed earlier in this document (Hashagen *et al.,* 2009; Green and Negri, 2005; Green *et al.,* 2007) and from Quintillion's Marine Mammal Monitoring Report during its 2016 subsea cable-laying operations (Quintillion 2017). The take numbers for harbor porpoise are adjusted upwards to account for group size.

TABLE 6—ESTIMATED AND REQUESTED TAKES OF MARINE MAMMAL BY LEVEL B HARASSMENT

Species	Beaufort summer exposures	Chukchi & Bering fall exposure	Total requested take	Abundance	Percentage of stock %
Bowhead whale	292	22	314	16,892	1.87
Gray whale	23	11	34	20,990	0.16
Beluga whale (Beaufort Sea)	184	4	188	39,258	0.48
Beluga whale (E. Chukchi Sea)	184	4	188	3,710	5.07
Beluga whale (E. Bering Sea)	184	4	188	19,186	0.98
Harbor porpoise	0	15	15	48,215	0.03
Ringed seal	838	17	855	170,000	0.50
Spotted seal	279	17	296	460,268	0.06
Bearded seal	42	20	62	299,174	0.02
Humpback whale	0	60	60	10,103	0.59
Fin whale	0	15	15	5,700	0.26
Minke whale	0	15	15	2,020	0.74
Killer whale	0	5	5	2,347	1.07
Ribbon seal	0	5	5	18,400	0.21
Steller sea lion	0	8	8	50,983	0.02

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this IHA to reduce the impacts of the activity on subsistence uses are described in the Proposed Mitigation section. Last, the information from this section and the Proposed Mitigation section is analyzed to determine whether the necessary findings may be made in the Unmitigable Adverse Impact Analysis and Determination section.

Underwater noise generated from the Quintillion's proposed cable-laying and O&M activities could affect subsistence uses of marine mammals by causing the animals to avoid the hunting areas and making the animals more difficult to approach by the hunters.

The cable-lay activities that might occur in 2017 as a result of repair work could occur within the marine subsistence areas used by the villages of Nome, Wales, Kotzebue, Little Diomede, Kivalina, Point Hope, Wainwright, Barrow, and Nuiqsut. Subsistence use various considerably by season and location. Seven of the villages hunt bowhead whales (Suydam and George 2004). The small villages of Wales, Little Diomedes, and Kivalina take a bowhead whale about once every five years. Point Hope and Nuiqsut each harvest three to four whales annually, and Wainwright five to six. Harvest from Barrow is far the highest with about 25 whales taken each year generally split between spring and fall hunts. Point Hope and Wainwright harvest occurs largely during the spring hunt, and Nuiqsut's during the fall. Nuiqsut whalers base from Cross Island, 70 km (44 mi) east of Oliktok.

Beluga are also annually harvested by the villages noted above. Beluga harvest is most important to Point Hope. For example, the village harvested 84 beluga whales during the spring of 2012, and averaged 31 whales a year from 1987 to 2006 (Frost and Suydam, 2010). Beluga are also important to Wainwright villages. They harvested 34 beluga whales in 2012, and averaged 11 annually from 1987 to 2006 (Frost and Suydam, 2010). All the other villages (Nome, Kotzebue, Wales, Kivalina, Little Diomede, and Barrow) averaged less than 10 whales per year (Frost and Suydam, 2010).

All villages use seals to one degree or another as well. Ringed seal harvest mostly occurs in the winter and spring when they are hauled out on ice near leads or at breathing holes. Bearded seals are taken from boats during the early summer as they migrate northward in the Chukchi Sea and eastward in the Beaufort Sea.

Bearded seals are a staple for villages like Kotzebue and Kivalina that have limited access to bowhead and beluga whales (Georgette and Loon, 1993). Thetis Island, located just off the Colville River delta, is an important base from which villagers from Nuiqsut hunt bearded seals each summer after ice breakup.

Spotted seals are an important summer resource for Wainwright and Nuiqsut, but other villages will avoid them because the meat is less appealing than other available marine mammals.

The proposed cable-lay activity will occur in the summer after the spring bowhead and beluga whale hunts have ended, and will avoid the ice period when ringed seals are harvested. The Oliktok branch will pass within 4 km (2 mi) of Thetis Island, but the actual laying of cable along that branch near the island should occur after the bearded seal hunt is over.

Quintillion states that it will work closely with the AEWC, the Alaska Beluga Whale Committee (ABWC), the Ice Seal Committee (ISC), and the NSB to minimize any effects cable-lay activities might have on subsistence harvest (see below).

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors. These are: (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, as well as subsistence uses—which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, 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.

Mitigation for Marine Mammals and Their Habitat

The primary purpose of these mitigation measures is to detect marine mammals and avoid vessel interactions during the pre- and post-cable-laying and O&M activities. Due to the nature of the activities, the vessel will not be able to engage in direction alteration during cable-laying operations. However, since the cable-laying vessel will be moving at a slow speed of 600 meter/hour (0.37 mile per hour or 0.32 knot) during cable-laying operations, it is highly unlikely that the cable vessel would have physical interaction with marine mammals. For Quintillion's proposed subsea cable-laying project, NMFS is requiring Quintillion to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of its planned activities.

(a) Vessel Movement Mitigation during Pre- and Post-cable-laying Activities:

When the cable-lay fleet is traveling in Alaskan waters to and from the project area (before and after completion of cable-laying or O&M operations), the fleet vessels would:

- Not approach concentrations or groups of whales (an aggregation of 6 or more whales) within 1.6 km (1 mi) by all vessels under the direction of Quintillion;
- Take reasonable precautions to avoid potential interaction with any bowhead whales observed within 1.6 km (1 mi) of a vessel; and
- Reduce speed to less than 5 knots when visibility drops, to avoid the likelihood of collision with whales. The normal vessel travel speeds when laying cable is well less than 5 knots.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;
- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and
- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

Quintillion has prepared a Plan of Cooperation (POC), which was developed by identifying and evaluating any potential effects the proposed cable-laying operation might have on seasonal abundance that is relied upon for subsistence use.

Specifically, the vessels that Quintillion will use will participate in the Automatic Identification System (AIS) vessel-tracking system allowing the vessel to be tracked and located in real time via the Marine Exchange of Alaska (MEA). Quintillion will sponsor memberships in the MEA such that local subsistence groups can monitor Quintillion vessel movements.

In addition, Quintillion will distribute a daily activity report by email to all interested parties. Daily reports will include vessel activity, location, subsistence information, and any potential hazards.

Quintillion project vessels will monitor local marine VHF channels as requested for local traffic and will use log books to assist in the standardization of record keeping.

A copy of the POC can be viewed on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

In addition, Quintillion shall monitor the positions of all of its vessels and will schedule timing and location of cable-laying segments to avoid any areas where subsistence activity is normally planned.

For vessels transiting to and from Quintillion's project area, Quintillion shall implement the following measures:

(A) Vessels transiting in the Beaufort Sea east of Bullen Point to the Canadian border shall remain at least 5 miles offshore during transit along the coast, provided ice and sea conditions allow. During transit in the Chukchi Sea, vessels shall remain as far offshore as weather and ice conditions allow, and at all times at least 5 miles offshore.

(B) From August 31 to October 31, transiting vessels in the Chukchi Sea or Beaufort Sea shall remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea, unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement. This condition shall not apply to vessels actively engaged in transit to or from a coastal community to conduct crew changes or logistical support operations.

(C) Vessels shall be operated at speeds necessary to ensure no physical contact with whales occurs, and to make any other potential conflicts with bowheads or whalers unlikely. Vessel speeds shall be less than 10 knots when within 1.6 kilometers (1 mile) of feeding whales or whale aggregations (6 or more whales in a group).

(D) If any vessel inadvertently approaches within 1.6 kilometers (1 mile) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

- Reducing vessel speed to less than 5 knots within 900 feet of the whale(s);
- Steering around the whale(s) if possible;
- Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;
- Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and
- Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

(E) Quintillion shall complete operations in time to ensure that vessels associated with the project complete transit through the Bering Strait to a point south of 59 degrees North latitude no later than November 15, 2017. Any vessel that encounters weather or ice that will prevent compliance with this date shall coordinate its transit through the Bering Strait to a point south of 59 degrees North latitude with local subsistence communities.

(F) Quintillion vessels shall, weather and ice permitting, transit east of St. Lawrence Island and no closer than 10 miles from the shore of St. Lawrence Island.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, 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, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Measures

Monitoring will provide information on the numbers of marine mammals affected by the subsea cable-laying and O&M operation and facilitate real-time mitigation to prevent injury of marine mammals by vessel traffic. These goals will be accomplished in the Bering, Chukchi, and Beaufort seas during 2017 by conducting vessel-based monitoring to document marine mammal presence and distribution in the vicinity of the operation area.

Visual monitoring by protected species observers (PSO) during subsea cable-laying and O&M operations, and periods when the operation is not occurring, will provide information on the numbers of marine mammals potentially affected by the activity. Vessel-based PSOs onboard the vessels will record the numbers and species of marine mammals observed in the area and any observable reaction of marine mammals to the cable-laying operation in the Bering, Chukchi, and Beaufort seas.

Vessel-Based Protected Species Observers

Vessel-based visual monitoring for marine mammals shall be conducted by NMFS-approved PSOs throughout the period of subsea cable-laying and O&M activities. PSOs shall be stationed aboard the cable-laying vessel throughout the duration of the subsea cable-laying and O&M operations.

A sufficient number of PSOs would be required onboard each survey vessel to meet the following criteria:

- 100 percent monitoring coverage during all periods of cable-laying and O&M operations in daylight;
- Maximum of 4 consecutive hours on watch per PSO; and
- Maximum of 12 hours of watch time per day per PSO.

PSO teams will consist of Inupiat observers and experienced field biologists. Each vessel will have an experienced field crew leader to supervise the PSO team. The total number of PSOs may decrease later in the season as the duration of daylight decreases.

(1) PSOs Qualification and Training

Lead PSOs and most PSOs will be individuals with experience as observers during marine mammal monitoring projects in Alaska or other offshore areas in recent years. New or inexperienced PSOs would be paired with an experienced PSO or experienced field biologist so that the quality of marine mammal observations and data recording is kept consistent.

Resumes for candidate PSOs will be provided to NMFS for review and acceptance of their qualifications. Inupiat observers would be experienced in the region and familiar with the marine mammals of the area. All observers will complete an observer training course designed to familiarize individuals with monitoring and data collection procedures.

(2) Establishing Zone of Influence

A PSO would establish a ZOI where the received level is 120 dB during Qunitillion's subsea cable-laying and O&M operations and conduct marine mammal monitoring during the operation. The measured 120 dB ZOI is 5.35 km from the cable-laying vessel.

(3) Marine Mammal Observation Protocol

PSOs shall watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. PSOs shall scan systematically with the unaided eye and 7 x 50 reticle binoculars, and night-vision and infra-red equipment when needed. Personnel on the bridge shall assist the marine mammal observer(s) in watching for marine mammals; however, bridge crew observations will not be used in lieu of PSO observation efforts.

Monitoring shall consist of recording of the following information:

1. The species, group size, age/size/sex categories (if determinable), the general behavioral activity, heading (if consistent), bearing and distance from vessel, sighting cue, behavioral pace, and apparent reaction of all marine mammals seen near the vessel (*e.g.,* none, avoidance, approach, paralleling, etc.);

2. The time, location, heading, speed, and activity of the vessel, along with sea state, visibility, cloud cover and sun glare at (I) any time a marine mammal is sighted, (II) at the start and end of each watch, and (III) during a watch (whenever there is a change in one or more variable);

3. The identification of all vessels that are visible within 5 km of the vessel from which observation is conducted whenever a marine mammal is sighted and the time observed;

4. Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals);

5. Any adjustments made to operating procedures; and

6. Visibility during observation periods so that total estimates of take can be corrected accordingly.

Distances to nearby marine mammals will be estimated with binoculars (7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water. Quintillion shall use the best available technology to improve detection capability during periods of fog and other types of inclement weather. Such technology might include night-vision goggles or binoculars as well as other instruments that incorporate infrared technology.

PSOs shall understand the importance of classifying marine mammals as ''unknown'' or ''unidentified'' if they cannot identify the animals to species with confidence. In those cases, they shall note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin. Additional details about unidentified marine mammal sightings, such as ''blow only,'' ''mysticete with (or without) a dorsal fin,'' ''seal splash,'' etc., shall be recorded.

Reporting Measures

A draft marine mammal monitoring report will be submitted to the Director, Office of Protected Resources, NMFS, within 90 days after the end of Quintillion's subsea cable-laying and O&M operations in the Bering, Chukchi, and Beaufort seas. The report will describe in detail:

1. Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the project period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

2. Summaries that represent an initial level of interpretation of the efficacy, measurements, and observations;

3. Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

4. Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

5. Estimates of uncertainty in all take estimates, with uncertainty expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, or another applicable method, with the exact approach to be selected based on the sampling method and data available; and

6. A clear comparison of authorized takes and the level of actual estimated takes.

Quintillion shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the subsea cable-laying and O&M activities or within 90 days of the expiration of the IHA, whichever comes first. The draft report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as a serious injury, or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Quintillion will immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Quintillion to determine the necessary measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Quintillion would not be able to resume its activities until notified by NMFS via letter, email, or telephone.

In the event that Quintillion discovers a dead marine mammal, and the lead PSO determines that the cause of the death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Quintillion would immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Quintillion to

determine whether modifications in the activities would be appropriate.

In the event that Quintillion discovers a dead marine mammal, and the lead PSO determines that the death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Quintillion would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline, within 24 hours of the discovery. Quintillion would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Quintillion can continue its operations under such a case.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed where the proposed activity may affect the availability of a species or stock for taking for subsistence uses (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state that upon receipt of a complete monitoring plan, and at its discretion, NMFS will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review Quintillion's 4MP for the proposed subsea cable-laying and O&M operations in the Bering, Chukchi, and Beaufort seas. The panel met via web conference in late March 2017, and will provide comments to NMFS in April 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' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 6, given that the anticipated effects of Quintillion's subsea cable-laying and O&M operations on marine mammals (taking into account the proposed mitigation) are expected to be relatively 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, they are described separately in the analysis below.

No injuries or mortalities are anticipated to occur as a result of Quintillion's subsea cable-laying and O&M operations, and none are authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. The takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating the area.

Any effects on marine mammals are generally expected to be restricted to avoidance of a limited area around Quintillion's proposed activities and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Mitigation measures, such as controlled vessel speed and dedicated marine mammal observers, will ensure that takes are within the level being analyzed. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the 13 marine mammal species likely to occur in the proposed cable-laying area, bowhead, humpback, fin whales, ringed and bearded seals, and Steller sea lion are listed as endangered or threatened under the ESA. These species are also designated as ''depleted'' under the MMPA. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

The project area of the Quintillion's proposed activities is within areas that have been identified as biologically important areas (BIAs) for feeding for the gray and bowhead whales and for reproduction for gray whale during the summer and fall months (Clarke *et al.,* 2015). In addition, the coastal Beaufort Sea also serves as a migratory corridor during bowhead whale spring migration, as well as for their feeding and breeding activities. Additionally, the coastal area of Chukchi and Beaufort seas also serve as BIAs for beluga whales for their feeding and migration. However, the Quintillion's proposed cable-laying and O&M operations would briefly transit through the area in a slow speed (600 meters per hour). As discussed earlier, the Level B behavioral harassment on marine mammals from the proposed activity is expected to be brief startling reaction and temporary vacating of the area. There are no long-term or biologically significant impacts to marine mammals expected from the proposed subsea cable-laying activity.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No injury or hearing impairment is anticipated or authorized;
- Only Level B behavioral disturbances by exposed marine mammals are likely;
- The levels and duration of marine mammals exposure to noises are low and brief; and
- Only a small fraction of marine mammal populations is expected to be affected.

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, 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.

The requested takes represent less than 5.07 percent of all populations or stocks potentially impacted (see Table 6 in this document). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment. The numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined unmitigable adverse impact in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As discussed earlier in this document, Quintillion worked with the cable-landing communities, tribal/subsistence organizations, and co-management groups to develop mutually agreed monitoring and mitigation measures. These measures rely strongly on effective communication between operations and communities to ensure that Quintillion's proposed subsea cable-laying and O&M operations would not have unmitigable adverse impact to subsistence use of marine mammals in the affected areas. In addition, the proposed IHA would require Quintillion to implement time and area limitations and vessel speed restrictions when passing through certain subsistence areas and/or encountering bowhead whales.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from Quintillion's proposed activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally with our ESA Interagency Cooperation Division whenever we propose to authorize take for endangered or threatened species.

Within the project area, the bowhead, humpback, and fin whales are listed as endangered and the ringed and bearded seals and Steller sea lion are listed as threatened under the ESA. NMFS' Permits and Conservation Division has initiated consultation with staff in NMFS' Alaska Region Protected Resources Division under section 7 of the ESA on the issuance of an IHA to Quintillion under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Quintillion for conducting subsea cable-laying and operation and maintenance activities, 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 Authorization is valid from June 15, 2017, through November 15, 2017.

2. This Authorization is valid only for activities associated with subsea cable-laying and subsea cables operation and maintenance (O&M) related activities in the Bering, Chukchi, and Beaufort seas. The specific areas where Quintillion's operations will be conducted are within the Bering, Chukchi, and Beaufort seas, Alaska, as shown in Figure 1–1 of Quintillion's IHA application.

3. (a) The species authorized taking by Level B harassment and in the numbers shown in Table 6 are: Beluga whales (*Delphinapterus leucas*); bowhead whales (*Balaena mysticetus*); gray whales (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), minke whale (*B. acutorostrata*), killer whale, (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), ringed seal (*Phoca hispida*), bearded seals (*Erignathus barbatus*), spotted seals (*Phoca largha*), ribbon seal (*Histriophoca fasciata*), and Steller sea lion (*Eumetopias jubatus*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Subsea cable-laying and subsea cable O&M activities; and
- Vessel activities related to the above activities.

4. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 6 of this notice. The taking by death, injury of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited unless separately authorized or exempted under the MMPA and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

5. Mitigation

(a) Vessel Movement Mitigation

(i) When the cable-lay fleet is traveling in Alaskan waters to and from the project area (before and after completion of cable-laying), the fleet vessels would:

(A) Not approach within 1.6 km (1 m) distance from concentrations or groups of whales (aggregation of six or more

whales) by all vessels under the direction of Quintillion

(B) Take reasonable precautions to avoid potential interaction with the bowhead whales observed within 1.6 km (1 mi) of a vessel.

(C) Reduce speed to less than 5 knots when weather conditions require, such as when visibility drops, to avoid the likelihood of collision with whales. The normal vessel travel speeds when laying cable is well less than 5 knots; however vessels laying cable cannot change course and cable-laying operations will not cease until the end of cable is reached.

(b) Mitigation Measures for Subsistence Activities

(i) Quintillion shall participate in the Automatic Identification System (AIS) vessel-tracking system to allow the vessel to be tracked and located in real time via the Marine Exchange of Alaska (MEA).

(ii) Quintillion will sponsor memberships in the MEA such that local subsistence groups can monitor Quintillion vessel movements.

(iii) Quintillion will distribute a daily activity report by email to all interested parties. Daily reports will include vessel activity, location, subsistence information, and any potential hazards.

(iv) Quintillion project vessels will monitor local marine VHF channels as requested for local traffic and will use log books to assist in the standardization of record keeping.

(v) Quintillion shall monitor the positions of all of its vessels and will schedule timing and location of cable-laying segments to avoid any areas where subsistence activity is normally planned.

(vi) Barge and ship transiting to and from the project area:

(A) Vessels transiting in the Beaufort Sea east of Bullen Point to the Canadian border shall remain at least 5 miles offshore during transit along the coast, provided ice and sea conditions allow. During transit in the Chukchi Sea, vessels shall remain as far offshore as weather and ice conditions allow, and at all times at least 5 miles offshore.

(B) From August 31 to October 31, transiting vessels in the Chukchi Sea or Beaufort Sea shall remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea, unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement. This condition shall not apply to vessels actively engaged in transit to or from a coastal community to conduct crew changes or logistical support operations.

(C) Vessels shall be operated at speeds necessary to ensure no physical contact with whales occurs, and to make any other potential conflicts with bowheads or whalers unlikely. Vessel speeds shall be less than 10 knots when within 1.6 kilometers (1 mile) of feeding whales or whale aggregations (6 or more whales in a group).

(D) If any vessel inadvertently approaches within 1.6 kilometers (1 mile) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

- Reducing vessel speed to less than 5 knots within 900 feet of the whale(s);
- Steering around the whale(s) if possible;
- Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;
- Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and
- Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

(vii) Quintillion shall complete operations in time to ensure that vessels associated with the project complete transit through the Bering Strait to a point south of 59 degrees North latitude no later than November 15, 2017. Any vessel that encounters weather or ice that will prevent compliance with this date shall coordinate its transit through the Bering Strait to a point south of 59 degrees North latitude with local subsistence communities. Quintillion vessels shall, weather and ice permitting, transit east of St. Lawrence Island and no closer than 10 miles from the shore of St. Lawrence Island.

6. Monitoring

(a) Vessel-Based Visual Monitoring

(i) Vessel-based visual monitoring for marine mammals shall be conducted by NMFS-approved protected species observers (PSOs) throughout the period of cable-laying and O&M activities.

(ii) PSOs shall be stationed aboard the cable-laying vessel throughout the duration of the subsea cable-laying and O&M operations.

(iii) A sufficient number of PSOs shall be onboard the survey vessel to meet the following criteria:

(A) 100 percent monitoring coverage during all periods of cable-laying operations in daylight;

(B) Maximum of 4 consecutive hours on watch per PSO, with a minimum 1-hour break between shifts; and

(C) Maximum of 12 hours of watch time in any 24-hour period per PSO.

(iv) The vessel-based marine mammal monitoring shall provide the basis for real-time mitigation measures as described in 5(b) above.

(b) PSOs Qualification and Training

(i) Lead PSOs and most PSOs will be individuals with experience as observers during marine mammal monitoring projects in Alaska or other offshore areas in recent years.

(ii) New or inexperienced PSOs will be paired with an experienced PSO or experienced field biologist so that the quality of marine mammal observations and data recording is kept consistent.

(iii) Resumes for candidate PSOs will be provided to NMFS for review and acceptance of their qualifications.

(iv) Inupiat observers shall be experienced in the region and familiar with the marine mammals of the area.

(v) All observers will complete an observer training course designed to familiarize individuals with monitoring and data collection procedures.

(c) Establishing Disturbance Zones

(i) Establish zones of influence (ZOIs) surrounding the cable-laying vessel where the received level would be 120 dB (rms) re 1 μPa. The size of the measured distance to the 120 dB (rms) re 1 μPa is 5.35 km.

(d) Marine Mammal Observation Protocol

(i) PSOs shall watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge.

(ii) PSOs shall scan systematically with the unaided eye and 7 x 50 reticle binoculars, and night-vision and infra-red equipment when needed.

(iii) Personnel on the bridge shall assist the marine mammal observer(s) in watching for marine mammals; however, bridge crew observations will not be used in lieu of PSO observation efforts.

(e) Monitoring Data Recording

(i) PSOs shall record the following information during monitoring:

(A) The species, group size, age/size/sex categories (if determinable), the general behavioral activity, heading (if consistent), bearing and distance from vessel, sighting cue, behavioral pace, and apparent reaction of all marine

mammals seen near the vessel (*e.g.,* none, avoidance, approach, paralleling, etc.);

(B) The time, location, heading, speed, and activity of the vessel, along with sea state, visibility, cloud cover and sun glare at (I) any time a marine mammal is sighted, (II) at the start and end of each watch, and (III) during a watch (whenever there is a change in one or more variable);

(C) The identification of all vessels that are visible within 5 km of the vessel from which observation is conducted whenever a marine mammal is sighted and the time observed;

(D) Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals);

(E) Any adjustments made to operating procedures; and

(F) Visibility during observation periods so that total estimates of take can be corrected accordingly.

(ii) Distances to nearby marine mammals will be estimated with binoculars (7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water.

(iii) Quintillion shall use the best available technology to improve detection capability during periods of fog and other types of inclement weather. Such technology might include night-vision goggles or binoculars as well as other instruments that incorporate infrared technology.

(iv) PSOs shall understand the importance of classifying marine mammals as ''unknown'' or ''unidentified'' if they cannot identify the animals to species with confidence. In those cases, they shall note any information that might aid in the identification of the marine mammal sighted.

7. Reporting

(a) Marine Mammal Monitoring Report

(i) Quintillion shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the subsea cable-laying and O&M activities or within 90 days of the expiration of the IHA, whichever comes first.

(ii) The draft report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the report prior to acceptance by NMFS.

(iii) The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(b) Notification of 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 the IHA, such as a serious injury, or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Quintillion will immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Quintillion to determine the necessary measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Quintillion would not be able to resume its activities until notified by NMFS via letter, email, or telephone.

(ii) In the event that Quintillion discovers a dead marine mammal, and the lead PSO determines that the cause of the death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Quintillion would immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Quintillion to determine whether modifications in the activities would be appropriate.

(iii) In the event that Quintillion discovers a dead marine mammal, and the lead PSO determines that the death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Quintillion would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline, within 24 hours of the discovery. Quintillion would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Quintillion can continue its operations under such a case.

8. 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.

9. A copy of this Authorization must be in the possession of each contractor who performs the subsea cable-laying and O&M activities in the U.S. Arctic Ocean.

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 Quintillion's subsea cable-laying and O&M activities in the U.S. Arctic Ocean. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: May 8, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–09599 Filed 5–11–17; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038–0075, Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''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. This notice solicits comments on the collections of information mandated by requirements that swap dealers (''SDs'') and major swap participants (''MSPs'') with respect to the treatment of collateral by their counterparties to margin, guarantee, or secure uncleared swaps.

DATES: Comments must be submitted on or before July 11, 2017.

ADDRESSES: You may submit comments, identified by ''Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy,'' and OMB Control No. 3038–0075 by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Gregory Scopino, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5175, email: *gscopino@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA,[1] 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 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, the CFTC is publishing notice of the proposed collection of information listed below. 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.

Title: Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy (OMB Control No. 3038–0075). This is a request for an extension of a currently approved information collection.

Abstract: On November 6, 2013, the Commission issued final rules implementing statutory provisions pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') and imposing requirements on SDs and MSPs with respect to the treatment of collateral posted by their counterparties to margin, guarantee, or secure uncleared swaps.[2] Additionally, the final rule includes revisions to ensure that, for purposes of subchapter IV of chapter 7 of the Bankruptcy Code, securities held in a portfolio margining account that is a futures account or a Cleared Swaps Customer Account constitute ''customer property''; and owners of such accounts constitute ''customers.'' [3] Section 4s(l) of the CEA sets forth certain requirements concerning the rights of counterparties of SDs and MSPs with respect to the segregation of money, securities, or other property used to margin, guarantee, or otherwise secure uncleared swaps. Regulation 23.701 implements part of the new statutory requirements by specifying that certain information must be provided to counterparties about the terms and conditions of segregation, including price information, to the extent that the SD or MSP has such information, and the identity of one or more independent depositories for segregated collateral. Regulation 23.704 implements the requirements of CEA Section 4s(l)(4), which dictates that, in certain circumstances, an SD or MSP must report to the counterparty, on a quarterly basis, ''that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.''

As discussed above, the rules establish reporting andrecordkeeping requirements that are mandated by Section 4s(l) of the CEA, which states that SDs and MSPs must notify their counterparties of the right to have their initial margin segregated and to maintain the confirmations and elections related to such notices as business records. The reporting and recordkeeping requirements are necessary to implement the objectives of Section 4s(1). For example, the information received by uncleared swap counterparties pursuant to Regulation 23.701 would alert counterparties to their statutory right, if they so choose, to have funds or property used as margin in uncleared swaps transactions with SDs and MSPs kept segregated from the property of the SD or MSP. Likewise, the information provided would further alert counterparties of the need to request such segregation if they wish to exercise this right. Simlarly, the information received by uncleared swap counterparties pursuant to Regulation 23.704 would be used to confirm that the back office procedures followed by a SD or MSP with whom they are dealing comply with the agreement of the parties.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

[1] 44 U.S.C. 3501 *et seq.*

[2] 78 FR 66621.

[3] *Id.*

• Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[4]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of registered SDs and MSPs. Accordingly, the respondent burden for this collection is estimated to be as follows:

Number of Registrants: 102.

Estimated Average Burden Hours per Registrant: 3,406.

Estimated Aggregate Burden Hours: 347,412.

Frequency of Reporting: As applicable.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 9, 2017.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2017–09686 Filed 5–11–17; 8:45 am]

BILLING CODE 6351–01–P

[4] 17 CFR 145.9.

BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights: Spring 2017

AGENCY: Bureau of Consumer Financial Protection.

ACTION: *Supervisory Highlights;* notice.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing its fifteenth edition of its *Supervisory Highlights.* In this issue of *Supervisory Highlights,* we report examination findings in the areas of mortgage servicing, student loan servicing, mortgage origination, and fair lending. As in past editions, this report includes information about a recent public enforcement action that was a result, at least in part, of our supervisory work. The report also includes information on recently released examination procedures and Bureau guidance.

DATES: The Bureau released this edition of the *Supervisory Highlights* on its Web site on April 26, 2017.

FOR FURTHER INFORMATION CONTACT: Adetola Adenuga, Consumer Financial Protection Analyst, Office of Supervision Policy, 1700 G Street NW., 20552, (202) 435–9373.

SUPPLEMENTARY INFORMATION:

1. Introduction

The Consumer Financial Protection Bureau is committed to a consumer financial marketplace that is fair, transparent, and competitive, and that works for all consumers. The Bureau supervises both bank and nonbank institutions to help meet this goal. In this fifteenth edition of *Supervisory Highlights,* the CFPB shares recent supervisory observations in the areas of mortgage servicing, student loan servicing, mortgage origination, and fair lending. In particular, we describe key new developments around spike and trend monitoring, service provider examinations, and production incentives. The findings reported here reflect information obtained from supervisory activities that were generally completed between September 2016 and December 2016 (unless otherwise stated). Corrective actions regarding certain matters may remain in process at the time of this report's publication.

CFPB supervisory reviews and examinations typically involve assessing a supervised entity's compliance management system and compliance with Federal consumer financial laws. When Supervision examinations determine that a supervised entity has violated a statute or regulation, Supervision directs the entity to implement appropriate corrective measures, such as implementing new policies, changing written communications, improving training or monitoring, or otherwise changing conduct to ensure the illegal practices cease. Supervision also directs the entity to send consumers refunds, pay restitution, credit borrower accounts, or take other remedial actions. Recent supervisory resolutions have resulted in total restitution payments of approximately $6.1 million to more than 16,000 consumers during the review period. Additionally, CFPB's recent supervisory activities have either led to or supported five recent public enforcement actions, resulting in over $39 million in consumer remediation and an additional $19 million in civil money penalties.

Please submit any questions or comments to *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

Recent supervisory observations are reported in the areas of mortgage origination, mortgage servicing, student loan servicing, and fair lending.

2.1 Mortgage Origination

2.1.1 Observations and Approach to Compliance With the Ability To Repay (ATR) Rule Requirements

Prior to the mortgage crisis, some creditors offered consumers mortgages without considering the consumer's ability to repay the loan, at times engaging in the loose underwriting practice of failing to verify the consumer's debts or income. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to provide that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, as well as all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.[1] The Dodd-Frank Act also amended TILA by creating a presumption of compliance with these ability-to-repay (ATR) requirements for creditors originating a specific category

[1] Section 1411 of the Dodd-Frank Act, Public Law 111–203, adding section 129C(a) to TILA, codified at 15 U.S.C. 1639c(a)).

of loans called ''qualified mortgage'' (QM) loans.[2]

To implement these statutory provisions, the Bureau amended Regulation Z to require that a creditor shall not make a loan that is a covered transaction (*i.e.,* in general, a closed-end, dwelling-secured consumer credit transaction) unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms (ATR rule).[3] For a QM loan, the rule provides a safe harbor for compliance with the ATR requirement for loans that are not higher-priced covered transactions and a presumption of such ATR compliance for higher-priced covered transactions.[4] The Bureau's ATR rule has been in effect since January 10, 2014. Since the effective date of the ATR rule, Supervision has observed that most entities examined by the Bureau are generally complying with the ATR rule.

This section focuses on recent supervisory examination observations and Supervision's approach to determining compliance with the ATR rule, including general requirements associated with the ATR rule for non-QM loans and verification requirements for information relied upon in making determinations of ability to repay. Specifically, this section discusses how Supervision assesses a creditor's ATR determination that includes reliance on verified assets and not income. It also explains whether a creditor can make a reasonable and good faith determination of ability to repay based on down payment size for a consumer with no verified income or assets.

2.1.2 Reasonable and Good Faith Determination Requirement and Basis for Determination

The ATR rule outlines minimum requirements for making determinations of ability to repay. Specifically, the rule enumerates factors a creditor must consider when making an ATR determination,[5] but beyond the requirements set forth in the rule, the ATR rule does not establish underwriting standards to which creditors must adhere. Creditors have flexibility in creating their own underwriting standards when making ATR determinations, as long as those standards incorporate the minimum requirements set forth in the rule. Therefore, Supervision evaluates whether a creditor's ATR determination is reasonable and in good faith by reviewing relevant lending policies and procedures and a sample of loan files and assessing the facts and circumstances of each extension of credit in the sample.

2.1.3 Verification Using Third-Party Records and Verification of Income or Assets

The ATR rule generally requires that creditors verify the information that they will rely upon to determine the consumer's repayment ability, using reasonably reliable third-party records.[6] A creditor must verify the amounts of income or assets the creditor relies on to determine a consumer's ability to repay the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets.[7] The ATR rule does not require that creditors adhere to a prescribed method of verifying income or assets. Creditors may refer to the non-exhaustive list of records set forth in the ATR rule in verifying the consumer's income or assets.[8]

When assessing a creditor's compliance with ATR rule requirements, Supervision determines whether the creditor considered the required underwriting factors in determining the ability to repay. Then examiners determine whether the creditor properly verified the information it relied upon in making that determination. Records a creditor uses for verification, including to verify income or assets, must be specific to the individual consumer.[9] For example, as discussed in the October 2016 issue of *Supervisory Highlights,* a creditor violated the ATR requirements by failing to properly verify income relied upon when considering the consumer's monthly debt-to-income ratio and determining the consumer's ability to repay.[10]

2.1.4 Reliance on the Consumer's Verified Assets and Not Income When Making an ATR Determination

The ATR rule provides that a creditor may base its determination of ability to repay on current or reasonably expected income from employment or other sources, assets other than the dwelling (and any attached real property) that secures the covered transaction, or both.[11] The income and/or assets relied upon must be verified. In situations where a creditor makes an ATR determination that relies on assets and not income, CFPB examiners would evaluate whether the creditor reasonably and in good faith determined that the consumer's verified assets suffice to establish the consumer's ability to repay the loan according to its terms, in light of the creditor's consideration of other required ATR factors, including: the consumer's mortgage payment(s) on the covered transaction, monthly payments on any simultaneous loan that the creditor knows or has reason to know will be made, monthly mortgage-related obligations, other monthly debt obligations, alimony and child support, monthly DTI ratio or residual income, and credit history. In considering these factors, a creditor relying on assets and not income could, for example, assume income is zero and properly determine that no income is necessary to make a reasonable determination of the consumer's ability to repay the loan in light of the consumer's verified assets.[12]

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[2] Section 1412 of the Dodd-Frank Act, adding section 129C(b) to TILA, codified at 15 U.S.C. 1639c(b).

[3] 12 CFR 1026.43(c).

[4] 12 CFR 1026.43(e).

[5] 12 CFR 1026.43(c)(2). A creditor must consider: (i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan; (ii) if the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status; (iii) the consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of the ATR rule; (iv) the consumer's monthly payment on any simultaneous loan that the creditor knows or has reason to know will be made, calculated in accordance with paragraph (c)(6); (v) the consumer's monthly payment for mortgage-related obligations; (vi) the consumer's current debt obligations, alimony, and child support; (vii) the consumer's monthly debt-to-income (DTI) ratio or residual income, calculated in accordance with paragraph (c)(7); and (viii) the consumer's credit history.

[6] 12 CFR 1026.43(c)(3).

[7] 12 CFR 1026.43(c)(4).

[8] 12 CFR 1026.43(c)(4). Creditors may verify the consumer's income by using a tax-return transcript issued by the Internal Revenue Service (IRS). Examples of other records the creditor may use to verify the consumer's income or assets include: (i) Copies of tax returns the consumer filed with the IRS or a State taxing authority; (ii) IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding; (iii) payroll statements, including military leave and earnings statements; (iv) financial institution records; (v) records from the consumer's employer or a third party that obtained information from the employer; (vi) records from a Federal, State, or local government agency stating the consumer's income from benefits or entitlements; (vii) receipts from the consumer's use of check cashing services; and (viii) receipts from the consumer's use of a funds transfer service.

[9] Comment 43(c)(3)–1.

[10] 12 CFR 1026.43(c)(2)(vii), (c)(4), and (c)(7).

[11] Comment 43(c)(2)(i)–1.

[12] For example, if a creditor considers monthly residual income to determine repayment ability for a consumer with no verified income, it might allocate the consumer's verified assets to offset what would be a negative monthly residual income (given that the ATR rule requires a creditor considering residual monthly income to do so by considering remaining income after subtracting total monthly debt obligations from total monthly income).

2.1.5 Reliance on Down Payment Size To Support Repayment Ability for a Consumer With No Verified Income or Assets

As an initial matter, a down payment cannot be treated as an asset for purposes of considering the consumer's income or assets under the ATR rule. As described above, the ATR rule requires creditors to consider a consumer's reasonably expected income or assets, ''*other than the value of the dwelling, including any real property attached to the dwelling that secures the loan.*'' [13] Additionally, while the size of a down payment generally affects the loan amount, the ATR rule already accounts for this by focusing the relevant inquiry on a consumer's ability to repay the loan according to its terms. All else being equal, a larger down payment will lower the loan size and monthly payment and will in this way improve a consumer's repayment ability. However, the size of a down payment does not directly indicate a consumer's ability to repay the loan according to its terms on a going-forward basis because a down payment is not an asset available for this purpose. Therefore, standing alone, down payments will not support a reasonable and good faith determination of the ability to repay. Supervision cannot anticipate circumstances where a creditor could demonstrate that it reasonably and in good faith determined ATR for a consumer with no verified income or assets based solely on the down payment size. This would be the case even where the loan program as a whole has a history of strong performance.

For every mortgage origination examination of Bureau supervised entities where Bureau examiners are assessing compliance with the ATR rule, Supervision will evaluate whether the creditor made a reasonable and good faith determination of the consumer's ability to repay in light of the facts and circumstances specific to each individual extension of credit. For further information on Supervision's approach to the ATR rule, Supervision encourages supervised entities to review the Bureau's Mortgage Origination Examination Procedures [14] and TILA Examination Procedures.[15] For summaries of the ATR rule, creditors can review the Bureau's Readiness Guide [16] and Small Entity Compliance Guide.[17] However, only the regulation and its accompanying commentary can provide complete and definitive information about the requirements.

2.2 Mortgage Servicing

The June 2016 edition of *Supervisory Highlights* discussed how outdated mortgage servicing technology and lapses in auditing and staff training have led to persistent compliance deficiencies with loss mitigation acknowledgement notices, loan modification denial notices, servicing transfers, and in other areas.[18] Supervision continues to observe serious problems with the loss mitigation process at certain servicers, including at one or more servicers that failed to request from borrowers the additional documents and information they needed to obtain complete loss mitigation applications, only to deny the applications for missing those documents.[19] Supervision directed these servicers to enhance policies, procedures, and monitoring to ensure that they promptly address the specific deficiencies found in each exam. Other issues reviewed during Supervision's most recent mortgage servicing examinations include dual tracking, problems with the maintenance of escrow accounts, and deficient periodic statements.

2.2.1 Dual Tracking

Regulation X generally [20] prohibits a servicer from making the first notice or filing required by applicable law for any judicial or nonjudicial foreclosure process (''first notice or filing'') if a consumer timely submits a complete loss mitigation application, unless certain circumstances are met.[21] This prohibition on foreclosure filing also extends to certain situations where a consumer timely submits all the missing documents and information as stated in a servicer's loss mitigation acknowledgment notice—that is, it applies to ''facially complete'' applications.[22]

Examiners found that one or more servicers did not properly classify loss mitigation applications as facially complete after receiving the documents and information requested in the loss mitigation acknowledgment notice and failed to afford these eligible consumers with foreclosure protections for facially complete applications as required by Regulation X. The servicer(s) made the first notice or filing even though the consumers had timely submitted facially complete applications and were entitled to Regulation X's foreclosure protections. Supervision also determined that the servicer(s) violated Regulation X by failing to maintain policies and procedures reasonably designed to properly evaluate a borrower who submits a loss mitigation application for all loss mitigation options for which the borrower may be eligible.[23] Supervision directed the servicer(s) to improve policies, procedures, and practices related to facially complete loss mitigation applications to ensure that the servicer(s) will not make a first notice or filing after receiving documents and information from a borrower until the servicer reviews the documents and information and determines that they do not comprise a facially complete application.[24] The servicer(s) remediated consumers affected by the improper first notice or filing for fees charged to the consumer in these circumstances, for other economic harms, and non-economic harms such as emotional distress.

2.2.2 Paying the Wrong Consumer's Insurance Premiums With Escrow Funds

One or more servicers disbursed funds from some borrowers' escrow accounts to pay insurance premiums owed by other borrowers. The practice

[13] 12 CFR 1026.43(c)(2)(i) (emphasis added).

[14] Mortgage Origination Examination Procedures, *available at https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/mortgage-origination-examination-procedures/.*

[15] TILA Examination procedures, *available at http://files.consumerfinance.gov/f/201509_cfpb_truth-in-lending-act-exam-procedures.pdf.*

[16] Readiness guide, *available at http://files.consumerfinance.gov/f/201509_cfpb_readiness-guide_mortgage-implementation.pdf.*

[17] See Ability-to-Repay and Qualified Mortgage Rule—Small Entity Compliance Guide, *available at http://files.consumerfinance.gov/f/201603_cfpb_atr-qm_small-entity-compliance-guide.pdf.*

[18] *See* Supervisory Highlights Mortgage Servicing Special Edition, *available at http://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-mortgage-servicing-special-edition-issue-11/.*

[19] 12 CFR 1024.41(c)(2)(iv).

[20] Pursuant to 12 CFR 1024.41(f)(1), the prohibition does not apply in three scenarios: (1) The borrower's mortgage loan obligation is more than 120 days delinquent, (2) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (3) the servicer is joining the foreclosure action of a subordinate lienholder.

[21] Pursuant to 12 CFR 1024.41(f)(2), the servicer may make the first notice or filing, stated generally, if the borrower's application is properly denied and the borrower has no further right to appeal, the borrower rejects all the options offered, or the borrower fails to perform under an agreement on a loss mitigation option.

[22] 12 CFR 1024.41(c)(2)(iv); 12 CFR 1024.41(f)(2) and comments 41(c)(2)(iv)–1 and –2.

[23] *See* 112 CFR 1024.38(b)(2)(v) (setting forth the requirement that servicers shall maintain policies and procedures reasonably designed to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of section 1024.41).

[24] This excludes circumstances where Regulation X permits a servicer(s) to make a first notice or filing.

created escrow shortages and increased monthly payments that consumers with affected escrow accounts could not avoid. Supervision cited this practice as unfair and directed that in addition to remediating affected consumers, the servicer(s) adopt policies and procedures to ensure that insurance payments are made properly from escrow accounts.[25]

2.2.3 Vague Periodic Statements

In connection with periodic statements required under Regulation Z, examiners found one or more servicers used the phrases ''Misc. Expenses'' and ''Charge for Service'' when describing transaction activity that caused a credit or debit to the amount currently due as displayed on periodic statements. Supervision cited the servicer(s) for violating Regulation Z requirements that the transaction activity listed on periodic statements include a brief description of the transactions because the phrases ''Misc. Expenses'' and ''Charge for Service'' were not adequate or specific enough to comply with the rule's requirement.[26] Supervision directed the servicer(s) to provide more specific descriptions in order to facilitate consumer understanding of the fees and charges imposed.

2.3 Student Loan Servicing

The Bureau continues to examine Federal and private student loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Act. Examiners identified an unfair act or practice and a deceptive act or practice relating to payment deferments in the Bureau's recent student loan servicing examinations.

2.3.1 Failing To Reverse Adverse Consequences of Erroneous Deferment Terminations

Many student loan lenders offer deferments during periods in which a borrower is attending school. To manage that benefit, student loan servicers rely on enrollment data supplied by schools via a third-party enrollment reporting company, National Student Clearinghouse. In general, schools regularly provide updated data files on their students' enrollment status to an enrollment reporting company, which in turn, facilitates the updating of enrollment data files that are sent to student loan servicers.[27] Each year, data about tens of millions of current and former students pass through this data exchange service. The servicers' automated systems will then trigger changes in a borrower's loan status. For Federal loans, a third-party enrollment reporting company often reports information through the Department of Education.

During one or more exams of student loan servicers, examiners found that incorrect information received from a third-party enrollment reporting service provider caused the servicer to automatically terminate deferments prematurely, while borrowers were still enrolled at least half-time in school. Based on subsequent reporting, the servicers corrected the premature termination and retroactively placed the borrowers back in deferment. However, examiners found that the servicers engaged in an unfair practice because they did not reverse the adverse financial consequences of the erroneous deferment termination, including late fees charged for non-payment during periods when the borrower should have been in deferment, and interest capitalization that occurred because the borrower's deferment was erroneously terminated. This practice was especially harmful to borrowers where the enrollment reporting data resulted in multiple premature deferment terminations, because interest capitalized multiple times, increasing principal balances by thousands of dollars in some instances.

Supervision determined these servicers engaged in the unfair practice of failing to reverse late fees and interest capitalization events after determining that they had erroneously terminated borrowers' in-school deferment based on enrollment reporting data. Supervision directed one or more servicers to engage an independent audit to find accounts that were adversely affected and remediate the resulting harm.

2.3.2 Deceptive Statements About Interest Capitalization During Successive Deferments

Student loan lenders usually offer a variety of deferment and forbearance options that allow borrowers to cease payments for a brief period of time. Often, when a forbearance or deferment ends, the interest that has accrued during the forbearance or deferment period is capitalized, meaning that the interest is added to the principal amount that accrues interest.

At one or more servicers, examiners found that servicers were placing borrowers into successive periods of forbearance or deferment where a new period immediately followed the previous period. When that happened, the servicers would capitalize interest after each period of deferment or forbearance, instead of capitalizing once when the borrower eventually reentered repayment. Since capitalized interest is added to the borrower's loan balance, capitalizing interest multiple times rather than once increases the amount the borrower ultimately must repay.

Supervision determined that one or more servicers had engaged in deceptive practices by stating that interest would capitalize at the end of the deferment period. Reasonable consumers likely understood this to mean interest would capitalize once, when the borrower ultimately exited deferment and entered repayment. These misleading statements were material because, given the significant financial consequences of interest capitalization, the borrower may have decided to take a different action. Supervision directed one or more servicers to engage an independent audit to find accounts that were adversely affected and remediate the resulting harm. One or more servicers started capitalizing interest only after the final forbearance or deferment in a series, and reversed past capitalization events based on successive deferments or forbearances.

2.4 Fair Lending

2.4.1 Update to Proxy Methodology

In the Summer 2014 edition of *Supervisory Highlights,*[28] the Bureau reported that examination teams use a Bayesian Improved Surname Geocoding (BISG) proxy methodology for race and ethnicity in their fair lending analysis of non-mortgage credit products. The BISG methodology relies on the distribution of race and ethnicity based on place-of-residence and surname, which are publicly available information from Census. The method involves constructing a probability of assignment to race and ethnicity based on demographic information associated with surname and then updating this probability using the demographic characteristics of the census block group associated with place of residence. The updating is performed through the application of a Bayesian algorithm,

[25] 12 U.S.C. 5536(a)(1)(B).

[26] 12 CFR 1026.41(d)(4).

[27] For more information on this process, see the Bureau's recent report on the topic. CFPB, Student Data & Student Debt: How student enrollment status problems can make student loans more expensive, Feb. 2017, *available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf.*

[28] See *Supervisory Highlights* (Summer 2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.*

which yields an integrated probability that can be used to proxy for an individual's race and ethnicity.[29]

In December, the U.S. Census Bureau released a list of the most frequently occurring surnames based on the most recent census, which includes values for total counts and race and ethnicity shares associated with each surname. In total, the list provides information on the 162,253 surnames that appear at least 100 times in the most recent census, covering approximately 90% of the population.[30] As of April 2017, examination teams are relying on an updated proxy methodology that reflects the newly available surname data from the Census Bureau. The new surname list; statistical software code, written in Stata; and other publicly available data used to build the BISG proxy are available at: *https://github.com/cfpb/proxy-methodology.*

3. Remedial Actions

3.1.1 Public Enforcement Actions

The Bureau's supervisory activities resulted in or supported the following public enforcement actions.

3.1.1 Experian

On March 23, 2017, the Bureau announced an enforcement action against Experian and its subsidiaries for deceiving consumers about the use of credit scores it sold to consumers.[31] In its advertising, Experian falsely represented that the credit scores it marketed and provided to consumers were the same scores lenders use to make credit decisions. In fact, lenders did not use the scores Experian sold to consumers. In some instances, there were significant differences between the scores that Experian provided to consumers and the various credit scores lenders actually use. As a result, Experian's credit scores in these instances presented an inaccurate picture of how lenders assessed consumer creditworthiness.

Experian also violated the Fair Credit Reporting Act (FCRA), which requires a credit reporting company to provide a free credit report once every twelve months and to operate a central source—*AnnualCreditReport.com*—where consumers can obtain their report. Until March 2014, consumers getting their report through Experian had to view Experian advertisements before they got to the report. This violates the FCRA prohibition of such advertising tactics.

The CFPB ordered Experian to truthfully represent how its credit scores are used and pay a $3 million civil money penalty.

3.1.2 Prospect Mortgage, Planet Home Lending, Re/Max Gold Coast, and Keller Williams Mid-Willamette

The Bureau entered consent orders against Prospect Mortgage, Keller Williams Mid Willamette (KW Mid-Willamette), Re/Max Gold Coast (RGC), and Planet Home Lending (Planet) on January 31, 2017.[32] The Bureau found that Prospect gave, and KW Mid-Willamette, RGC, and Planet received, a thing of value in exchange for mortgage loan referrals. This arrangement violated Section 8 of the Real Estate Settlement Procedures Act, which prohibits kickbacks for the referral of settlement service business.

Among other things, the Bureau found that KW Mid-Willamette paid a cash equivalent to its agents in return for referrals to Prospect. In addition, as part of its agreement to refer settlement service business to Prospect, RGC required hundreds of consumers to prequalify with Prospect before accepting an offer to buy a property where RGC represented the seller. The Bureau also found that Planet, a mortgage servicer, called consumers in an attempt to steer them to Prospect. Planet provided a 'warm transfer' to a Prospect loan agent to facilitate Prospect receiving the consumers' refinance business. Planet and Prospect split the net proceeds from these refinances.

The Bureau also found that Planet violated the Fair Credit Reporting Act by obtaining consumer reports without a permissible purpose. Finally, as described in the consent order, the Bureau found that Prospect paid hundreds of counterparties for referrals using desk license agreements, marketing services agreements, and lead agreements. These actions illustrate the legal risks associated with these types of agreements—as described in the Bureau's Compliance Bulletin 2015–05—for both the parties making and the parties receiving payments for referrals of real estate settlement services. Prospect was ordered to pay a $3.5 million civil penalty, and the real estate brokers and servicer were ordered to pay a combined $495,000 in consumer relief.

3.1.3 CitiFinancial Servicing and CitiMortgage

On January 23, 2017, the Bureau took separate actions against CitiFinancial Servicing and CitiMortgage, Inc. for giving the runaround to struggling homeowners seeking options to save their homes.[33] Among other things, the Bureau found that CitiFinancial kept consumers in the dark about foreclosure relief options. When borrowers applied to have their payments deferred, CitiFinancial failed to consider it as a request for foreclosure relief options. Such requests for foreclosure relief trigger protections required by CFPB mortgage servicing rules, which include helping borrowers complete their applications and considering them for all available foreclosure relief alternatives. As a result, CitiFinancial violated the Real Estate Settlement Procedures Act and borrowers may have missed out on foreclosure relief options that may have been more appropriate for them.

The Bureau also found that some borrowers who asked CitiMortgage for assistance were sent a letter demanding dozens of documents and forms that had no bearing on the application or that the consumer had already provided. Many of these documents had nothing to do with a borrower's financial circumstances and were actually not needed to complete the application. Letters sent to borrowers in 2014 requested documents with descriptions such as ''teacher contract,'' and ''Social Security award letter.'' CitiMortgage sent such letters to about 41,000 consumers. In doing so, CitiMortgage violated the Real Estate Settlement Procedures Act, and the Dodd-Frank Act's prohibition against deceptive acts or practices.

The CFPB order requires CitiMortgage to pay an estimated $17 million in remediation to consumers, and pay a civil penalty of $3 million; and requires CitiFinancial Services to refund approximately $4.4 million to consumers, and pay a civil penalty of $4.4 million.

[29] For more information on the methodology, *see* Consumer Financial Protection Bureau, *Using publicly available information to proxy for unidentified race and ethnicity* (Sept. 2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.*

[30] The surname data are available on the Census Bureau's Web site, *see* Frequently Occurring Surnames from the 2010 Census (last revised Dec. 27, 2016), *https://www.census.gov/topics/population/genealogy/data/2010_surnames.html.*

[31] *See* CFPB Fines Experian $3 Million for Deceiving Consumers in Marketing Credit Scores, *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-experian-3-million-deceiving-consumers-marketing-credit-scores/.*

[32] *See* CFPB Orders Prospect Mortgage to Pay $3.5 Million Fine for Illegal Kickback Scheme, *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-prospect-mortgage-pay-35-million-fine-illegal-kickback-scheme/.*

[33] *See* CFPB Orders Citi Subsidiaries to Pay $28.8 Million for Giving the Runaround to Borrowers Trying to Save Their Homes, *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-subsidiaries-pay-288-million-giving-runaround-borrowers-trying-save-their-homes/.*

3.1.4 Equifax and TransUnion

On January 3, 2017, the Bureau took action against Equifax, and against TransUnion, and their subsidiaries for deceiving consumers about the usefulness and actual cost of credit scores they sold to consumers.[34] In their advertising, TransUnion and Equifax falsely represented that the credit scores they marketed and provided to consumers were the same scores lenders typically use to make credit decisions. The companies also claimed that their credit scores and credit-related products were free, or in the case of TransUnion, cost only ''$1.'' In fact, the scores sold by TransUnion and Equifax were not typically used by lenders to make those decisions. Moreover, consumers who signed up for credit scores or credit-related products received a free trial of seven or 30 days, after which they were automatically enrolled in a subscription program. Unless they cancelled during the trial period, consumers were charged a recurring fee—usually $16 or more per month.

Equifax also violated the FCRA, which requires a credit reporting agency to provide a free credit report once every 12 months and to operate a central source—*AnnualCreditReport.com*—where consumers can get their report. Until January 2014, consumers getting their report through Equifax first had to view Equifax advertisements. This violates the FCRA, which prohibits such advertising until after consumers receive their report.

The CFPB ordered TransUnion and Equifax to truthfully represent the value of the credit scores they provide and the cost of obtaining those credit scores and other services. Between them, TransUnion and Equifax must pay a total of more than $17.6 million in restitution to consumers, and a $5.5 million civil money penalty.

3.1.5 Moneytree, Inc.

On December 16, 2016, the Bureau took action against Moneytree for misleading consumers with deceptive online advertisements and collections letters, and for making unauthorized electronic transfers from consumers' bank accounts.[35] Specifically, the CFPB found that Moneytree deceived consumers about the price of check-cashing services, made false threats of vehicle repossession when collecting overdue unsecured loans, and withdrew funds from consumers' accounts without proper written authorization. The CFPB ordered the company to cease its illegal conduct, provide $255,000 in refunds to consumers, and pay a civil penalty of $250,000.

Prior to taking enforcement action, the Bureau identified significant weaknesses in Moneytree's compliance management system through multiple supervisory examinations of Moneytree's lending, marketing, and collections activities. At the time of the violations described in the order, Moneytree had not adequately addressed these issues. Moneytree's failure to adequately address CFPB's supervisory concerns was a factor in the Bureau's determination to pursue this matter through a public enforcement action.

3.2 Non-Public Supervisory Actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately $6.1 million in restitution to more than 16,000 consumers. These non-public supervisory actions generally have been the product of CFPB supervision and examinations, often involving either examiner findings or self-reported violations of Federal consumer financial law during the course of an examination. Recent non-public resolutions were reached in auto finance origination matters.

4. Supervision Program Developments

4.1 Examination Procedures

4.1.1 Overview and Examination Chapters

The CFPB has updated sections of its Supervision and Examination Manual. These updates include revisions to certain sections of Part I—Compliance Supervision and Examination (Overview and Examination Process).[36] The corresponding Scope Summary template has also been updated.[37] These revisions were necessitated by the updated Federal Financial Institutions Examination Council (FFIEC) Uniform Interagency Consumer Compliance Rating System, which became effective on March 31, 2017. The revisions also reflect changes in our supervisory program, such as the refinement to our examination prioritization process.

4.1.2 Changes to Reporting Templates

New reporting templates for Supervisory Letters and Examination Reports (collectively referred to as Reports) are now available on the CFPB Web site.[38] These changes aim to simplify Reports and facilitate follow-up reporting by supervised entities about actions they are taking to address compliance management weaknesses or legal violations found during Bureau examinations.

4.2 Service Provider Examination Program

In bulletins and past issues of *Supervisory Highlights,* the CFPB has emphasized that effective service provider oversight is a crucial component of any compliance management system (CMS).[39] The CFPB expects its supervised entities to have an effective process for identifying and managing the risks to consumers created by the choices made to outsource certain activities to service providers.[40] The CFPB has and will continue to evaluate the oversight of service providers in its compliance management reviews according to these expectations.

At the same time, the CFPB recognizes the potential risks to consumers posed by large service

[34] *See* CFPB Orders TransUnion and Equifax to Pay for Deceiving Consumers in Marketing Credit Scores and Credit Products, *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/.*

[35] *See* CFPB Takes Action Against Moneytree for Deceptive Advertising and Collection Practices, *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-moneytree-deceptive-advertising-and-collection-practices/.*

[36] *See* the Overview and Examination Process updates, *available at https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/updated-portions-overview-and-examination-process/.*

[37] *See* Scope Summary template, *available at https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/scope-summary-template/.*

[38] Report templates are *available at https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/supervisory-report-and-letter-templates/.*

[39] See *e.g., Supervisory Highlights* (Fall 2016), *available at http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf*; *Supervisory Highlights* (Summer 2016), *available at http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf*; and *Supervisory Highlights* (Spring 2014), *available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.* For Bulletins, *see* Compliance Bulletin and Policy Guidance; 2016–03, Detecting and Preventing Consumer Harm from Production Incentives *available at https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/cfpb-compliance-bulletin-2016-03-detecting-and-preventing-consumer-harm-from-production-incentives/*; and Compliance Bulletin and Policy Guidance; 2016–02, Service Providers (amends and reissues CFPB Bulletin 2012–03), *available at https://www.consumerfinance.gov/documents/1385/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.*

[40] Compliance Bulletin and Policy Guidance; 2016–02, Service Providers (amends and reissues CFPB Bulletin 2012–03), *available at https://www.consumerfinance.gov/documents/1385/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.*

providers,[41] which provide technological support to facilitate compliance with Federal consumer financial law, including software packages, electronic system platforms, and other types of technological tools. These compliance tools are often provided to thousands of participants in a particular market. As such, compliance risks in an entire market may be heightened when regulatory compliance is not considered and integrated throughout the development lifecycle, change, and configuration of these compliance systems.

Because a single service provider might affect consumer risk at many institutions, the CFPB has begun to develop and implement a program to supervise these service providers directly.[42] Direct examination of key service providers will provide the CFPB the opportunity to monitor and potentially reduce risks to consumers at their source.

In its initial work, the CFPB is conducting baseline reviews of some service providers to learn about the structure of these companies, their operations, their compliance systems, and their CMS. In more targeted work, the CFPB is focusing on service providers that directly affect the mortgage origination and servicing markets. The CFPB will shape its future service provider supervisory activities based on what it learns through its initial work. As with all new examination programs, service provider supervision is folded into the Bureau's overall risk-based prioritization process.[43]

[41] Compliance information systems are information systems and processes used by financial institutions to produce consumer financial products and services.

[42] The Dodd-Frank Act grants the Bureau the authority to examine ''service providers'' to certain entities. More specifically, under Dodd-Frank Act subsections 1024(e) and 1025(d), the Bureau has the authority to examine, in coordination with the appropriate prudential regulator(s), service providers to entities described in Dodd-Frank Act subsections 1024(a)(1) or 1025(a), to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act. And, under Dodd-Frank Act section 1026(e), the Bureau has the authority to examine, in coordination with the appropriate prudential regulator(s), service providers to a substantial number of entities described in Dodd-Frank Act subsection 1026(a), to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act. *See* Dodd-Frank Act Sections 1024–1026, codified at 12 U.S.C. 5514–5516.

[43] See Section 3.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights:* Summer 2013, *available at http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.*

4.3 Spike and Trend Monitoring

As a data-driven agency, the Bureau has prioritized detecting issues in the market that could result in risk to consumers. The Bureau has historically incorporated this information about market trends into the risk-based prioritization of examinations.[44] To this end, the Bureau now continuously monitors spikes and trends in complaints. Our automated capability monitors the volume of consumer complaints for all companies named by consumers in complaint submissions. Our active monitoring algorithms identify short, medium, and long-term changes in complaint volumes in daily, weekly, and quarterly windows. Importantly, the tool works regardless of company size, random variation, general complaint growth, and seasonality.

The tool is intended to be an effective early warning system, helping the Bureau to identify consumer issues quickly and engage with companies earlier. For example, in one instance, the regional exam team, after reviewing complaints associated with a spike in complaint volume, immediately reached out to the company to inform senior management and discuss consumers' concerns. The Bureau was able to engage senior management before they were aware of the matter through their own internal processes. The company quickly developed and implemented a plan to correct the issues, provided accurate information to customer service representatives, and developed a refund policy and process for affected consumers, minimizing potential harm to consumers and further risk of exposure for the company.

4.4 Recent CFPB Guidance

The CFPB is committed to providing guidance on its supervisory priorities to industry and members of the public.

4.4.1 Compliance and Regulatory Implementation Resources

The Bureau is continuously working to facilitate compliance and empower stakeholders to understand and apply Federal consumer financial laws. In addition to official guidance provided by the Bureau, there are a variety of tools and resources for industry and other stakeholders. These resources include plain-language guides, rules summaries, reference charts, sample forms, interactive Web pages, and webinars. The Bureau refers to this ongoing work as ''regulatory implementation.'' The implementation and guidance Web page[45] includes links to dedicated Web pages for HMDA, the Know Before You Owe mortgage disclosure rule, Prepaid Rule, Title XIV (which includes both mortgage origination and mortgage servicing), remittance transfers, and the rural and underserved counties list. There are also instructions on how to provide feedback on the material and sign up to receive notices on new regulatory implementation efforts and materials.

Another tool provided by the Bureau to support compliance and implementation is eRegulations,[46] a web-based, open source platform that makes regulations easier to find, read, and use. It brings official interpretations, regulatory history, and other information to the forefront to clarify regulations. The eRegulations tool has been updated to include Regulations B, C, D, E, J, K, L, M, X, Z and DD. User feedback consistently indicates that many users have found this platform to be very useful for navigating Bureau regulations.

4.5 Production Incentives

On November 28, 2016, CFPB published Compliance Bulletin 2016–03, ''Detecting and Preventing Consumer Harm from Production Incentives.'' The Bureau recognizes that many supervised entities may choose to implement incentive programs to achieve business objectives. These production incentives can lead to significant consumer harm if not properly managed. However, when properly implemented and monitored, reasonable incentives can benefit consumers and the financial marketplace as a whole.

This bulletin compiles guidance that has previously been given by the CFPB in other contexts and highlights examples from the CFPB's supervisory and enforcement experience where incentives contributed to substantial consumer harm. It also describes compliance management steps that supervised entities should take to mitigate risks posed by incentives.

The CFPB anticipates that careful and thoughtful implementation of the guidance contained in this bulletin will yield substantial benefits for both bank and nonbank financial institutions, as well as for consumers. In particular, it should help institutions prevent, identify, and mitigate issues that could pose significant legal, regulatory, and

[44] See Section 3.2.3, *Supervisory Highlights* (Summer 2013), *available at http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.*

[45] These resources are available at *http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/.*

[46] The eRegulations tool is available at *https://www.consumerfinance.gov/eregulations/.*

reputational risks that could also cause harm for consumers.

5. Conclusion

The Bureau recognizes the value of communicating our program findings to CFPB supervised entities to help them in their efforts to comply with Federal consumer financial law, and to other stakeholders to foster a better understanding of the CFPB's work.

To this end, the Bureau remains committed to publishing its *Supervisory Highlights* report periodically to share information about general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), to communicate operational changes to the program, and to provide a convenient and easily accessible resource for information on the Bureau's guidance documents.

Dated: April 22, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–09658 Filed 5–11–17; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, May 24, 2017, 3:00–4:00 p.m. (ET).

PLACE: Corporation for National and Community Service, 250 E Street SW., Suite 4026, Washington, DC 20525 (Please go to the first floor lobby reception area for escort).

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–779–9469 conference call access code number 6366753. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 800–944–3743. TTY: 402–998–1748. The end replay date is June 7, 2017 at 11:59 p.m. (ET).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments
II. Acting CEO Report
III. Public Comments
IV. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *eharsch@cns.gov* with subject line: MAY 2017 CNCS BOARD MEETING by 5:00 p.m. (ET) on May 22, 2017. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Eric Harsch at *eharsch@cns.gov* or 202–606–6928 by 5 p.m. (ET) on May 19, 2017.

CONTACT PERSON FOR MORE INFORMATION: Eric Harsch, Program Support Assistant, Corporation for National and Community Service, 250 E Street SW., Washington, DC 20525. Phone: 202–606–6928. Fax: 202–606–3460. TTY: 800–833–3722. Email: *eharsch@cns.gov.*

Dated: May 10, 2017.

Angela Williams,

Acting General Counsel.

[FR Doc. 2017–09770 Filed 5–10–17; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery, Honor Subcommittee and the Remember and Explore Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meetings.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory subcommittee meetings of the Honor Subcommittee and the Remember and Explore Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). These meetings are open to the public. For more information about the Committee and the Subcommittees, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Honor Subcommittee will meet from 8:30 a.m. to 12:00 p.m. and the Remember and Explore Subcommittee will meet from 2:45 p.m. to 4:00 p.m. on Wednesday, June 7, 2017.

ADDRESSES: The Honor Subcommittee and the Remember & Explore Subcommittee will meet in the Welcome Center Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating; Designated Federal Officer (Alternate) for the Committee and the Subcommittees, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *timothy.p.keating.civ@mail.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 CFR 102–3.150.

Purpose of the Meetings: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Honor Subcommittee is to accomplish an independent assessment of methods to address the long-term future of the Army national cemeteries, including how best to extend the active burials and what ANC should focus on once all available space is used. At this meeting the subcommittee will receive a presentation of the report to Congress concerning ANC capacity as required by Public Law 114–158 and subsequently conduct a roundtable discussion with visiting members of the public. The subcommittee may then report its deliberations and findings to the full committee.

The primary purpose of the Remember & Explore Subcommittee is to recommend methods to maintain the Tomb of the Unknown Soldier Monument, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement marble stone for the sarcophagus already gifted to the Army; accomplish an independent assessment of requests to place commemorative monuments; and identify means to capture and convey ANC's history,

including Section 60 gravesite mementos, and improve the quality of visitors' experiences now and for generations to come. At this meeting the subcommittee will hear a proposal to place a commemorative monument within ANC, receive a briefing of the ANC Monuments Working Group study of the proposal, and may vote to make a recommendation to the full committee to approve or disapprove the proposal. Additionally, the subcommittee is expected to select a subcommittee member to nominate to the full committee as a successor to the sitting Chairperson.

Proposed Agenda: The Honor Subcommittee will conduct a roundtable discussion with visiting members of the public of the ANC Capacity Report to Congress required by Public Law 114–158. The subcommittee may then report its deliberations and findings to the full committee. The Remember and Explore subcommittee will receive a presentation from a private association proposing to erect a commemorative monument within ANC in accordance with Title 38 U.S.C. 2409 and a presentation from the ANC Monuments Working Group regarding their study of the proposal. The subcommittee may deliberate and subsequently make a recommendation to the full Committee which may then make a recommendation to the Secretary of the Army whether to approve or disapprove the proposal.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America Memorial Auditorium and the ANC Welcome Center Conference room are both readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Timothy Keating, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Mr. Timothy Keating, the subcommittee's Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak or otherwise address the subcommittee during the meeting. However, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–09647 Filed 5–11–17; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2015–HA–0008]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 12, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Health Insurance Claims Form; UB–04 CMS 1450; OMB Control Number 0720–0013.

Type of Request: Reinstatement.

Number of Respondents: 10,318.

Responses per Respondent: 83.241.

Annual Responses: 858,881.

Average Burden per Response: 16 minutes.

Annual Burden Hours: 41,884.

Needs and Uses: This information collection requirement is necessary for a medical institution to claim benefit under the Defense Health Agency, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The information collected will be used by CHAMPUS/TRICARE contractors to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care and that the provider is authorized to receive CHAMPUS/TRICARE payments.

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

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: May 8, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–09620 Filed 5–11–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research. This meeting is open to the public.

DATES: The Board on Coastal Engineering Research will meet from 8:00 a.m. to 5:00 p.m. on June 27, 2017 and reconvene from 8:00 a.m. to 5:00 p.m. on June 28, 2017. The Executive Session of the Board will convene from 8:00 a.m. to 12:00 p.m. on June 29, 2017.

ADDRESSES: All sessions will be held at the Hilton Hawaiian Village Hotel Coral Ballroom #4, 2005 Kalia Road, Honolulu, HI 96815. All sessions, including the Executive Session are open to the public. For more information about the Board, please visit *https://chl.erdc.dren.mil/usace-cerb/.*

FOR FURTHER INFORMATION CONTACT: COL Bryan S. Green Designated Federal Officer (DFO), U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, phone 601–634–2513, or *Bryan.S.Green@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) 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 Board on Coastal Engineering Research provides broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers.

Purpose of the Meeting: The theme of the meeting is ''Coastal Structures in a Sea of Change.'' The purpose of the meeting is to identify priority research to address opportunities and challenges of designing, constructing and maintaining coastal infrastructure.

Agenda: On Tuesday morning, June 27, 2017, panel presentations will deal with Changing Conditions and Coastal Structures across the Pacific Ocean. Presentations will include: Coastal infrastructure across the Pacific; Alaska Coastal Erosion Program; Pacific Ocean Hazards; Tinian Harbor General Investigations Study; Practical Resilience Metrics for Coastal Infrastructure Features; and Waikiki Beach, HI Shore Protection Project. There will be an optional field trip Tuesday afternoon, which is open to the public. It includes a bus tour to Iroquois Point, Hawaii and a Pearl Harbor Tour by the National Park Service.

On Wednesday morning, June 28, 2017, the Board will reconvene to discuss Coastal Structures State of Practice. Presentations will include: Coastal Structures Design, Construction and Maintenance State of Practice; When to Repair a Coastal Structures; Projecting Rapid Response Across the Pacific; Floating Double Deck Pier; Enabling Ship to Shore Movement; Port Improvement via Exigent Repair (PIER) Joint Capability Technology Demonstration Results; and Vulnerability and Adaptation of Coastal Infrastructure. Wednesday afternoon session continues with the Hazards, Technology and Tools panel. Presentations include: Surge & Wave Modeling System (SWMS); Hawaii's National Shoreline Management Study (NSMS); Pacific Islands Ocean Observing System (PacIOOS); Predicting Channel Dredging Requirements; and Coastal Structures Research Priorities.

The Board will meet in Executive Session to discuss ongoing initiatives and future actions on Thursday morning, June 29, 2017.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public. Because seating capacity is limited, advance registration is required. For registration requirements please see below.

Oral participation by the public is scheduled for 4:00 p.m. on Wednesday, June 28, 2017. The Hilton Hawaiian Village Hotel is fully handicap accessible. For additional information about public access procedures, please contact COL Bryan S. Green, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than June 5, 2017, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: Pursuant to 41 CFR 102–3.015(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to COL Bryan S. Green, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in

consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–09648 Filed 5–11–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2015–0005]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 12, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Facilities Available for the Construction or Repair of Ships; Standard Form 17; OMB Control Number 0703–0006.

Type of Request: Reinstatement.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 4 hours.

Annual Burden Hours: 800.

Needs and Uses: This information collection is part of a joint effort between the Naval Sea Systems Command (NAVSEA) and the U.S. Maritime Administration (MARAD), to maintain a working data set on active U.S. Shipyards. The information collected is required by the Merchant Marine Act of 1936 as amended and is critical in providing both organizations with a comprehensive list of U.S. commercial shipyards and their capabilities and capacities. These shipyards play a crucial role in national defense, the economy and the U.S. transportation infrastructure and as such, are of considerable interest to the U.S. Government. The data collected is used to assess the capabilities and capacities of U.S. commercial shipyards in the areas of ship repair and ship construction. The data is also used to monitor employment numbers for labor forecasting for future build projects as well as providing information on the ability to raise labor to meet national industrial mobilization requirements during times of national emergency. The data collected is the main source of information on these shipyards and is used to these ends.

Affected Public: Business or other for-profit.

Frequency: Annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: May 8, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–09628 Filed 5–11–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board Quarterly Board Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the May 18–20, 2017 Quarterly Board Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments on the meeting. Due to unavoidable delays during the Administration transition, this notice is being posted less than 15 days prior to the Board meeting date.

DATES: The Quarterly Board Meeting will be held on the following dates:

• May 18, 2017 from 12:30 p.m. to 5:30 p.m.

• May 19, 2017 from 8:30 a.m. to 4:45 p.m.

• May 20, 2017 from 7:30 a.m. to 11:45 a.m.

ADDRESSES: The Commons Hotel, 615 Washington Avenue SE., Minneapolis, MN 55414

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official of the Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Pub. L. 107–279. Information on the Governing Board (hereafter Governing Board) and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

May 18–20, 2017 Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's committee meeting minutes available at *http://nagb.gov/what-we-do/board-committee-reports-and-agendas.html.*

Detailed Meeting Agenda: May 18–20, 2017

May 18: Committee Meetings

Assessment Development Committee (ADC): Closed Session: 12:30 p.m. to 3:30 p.m.;

Executive Committee: Open Session: 4:00 p.m. to 4:30 p.m.; Closed Session: 4:30 p.m. to 5:30 p.m.

May 19: Full Governing Board and Committee Meetings

Full Governing Board: Open Session: 8:30 a.m. to 10:15 a.m.; Closed Session: 1:00 p.m. to 2:15 p.m.; Open Session 2:30 p.m. to 4:45 p.m.

Committee Meetings:

Assessment Development Committee (ADC): Open Session: 10:30 a.m. to 11:45 a.m.; Closed Session: 11:45 a.m. to 12:45 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:30 a.m. to 12:45 p.m.

Reporting and Dissemination (R&D): Open Session 10:30 a.m. to 12:00 p.m.; Closed Session 12:05 p.m. to 12:45 p.m.

May 20: Full Governing Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m. to 8:15 a.m.

Full Governing Board: Open Session: 8:30 a.m. to 11:45 a.m.

On Thursday, May 18, 2017, ADC will meet in closed session from 12:30 p.m. to 3:30 p.m. to review secure cognitive items and digital-based tasks for the grade 12 NAEP Mathematics assessment, the grade 12 NAEP Reading assessment, and the NAEP Science at grades 4, 8, and 12. The ADC will also review items and secure data for survey questionnaire items to be administered with NAEP assessments for Science, U.S. History, Civics, and Geography. This meeting must be conducted in closed session because the test items and data are secure and have not been released to the public. Public disclosure of the secure test items would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

On Thursday, May 18, 2017, the Executive Committee will convene in open session from 4:00 p.m. to 4:30 p.m., and in closed session from 4:30 p.m. to 5:30 p.m. During the closed session, the Executive Committee will receive and discuss information related to the federal budget process, independent cost estimates and implications for implementing NAEP's Assessment Schedule through 2024, and the Governing Board's planned procurements to implement its Strategic Vision. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing confidential cost details and proprietary contract costs of current contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

On Friday, May 19, 2017, the Governing Board will meet in open session from 8:30 a.m. to 10:15 a.m. The Governing Board will review and approve the May 18–20, 2017 Board meeting agenda and meeting minutes from the March 2017 Quarterly Board Meeting. Thereafter, a panel of Minneapolis District Leaders will lead a session on Social Emotional Learning and the Relationship to Traditional Academic Variables. The Governing Board will recess for standing committee meetings which will take place from 10:30 a.m. to 12:45 p.m.

On May 19, 2017, COSDAM will meet in open session from 10:30 a.m. to 12:45 p.m. ADC will meet in open session from 10:30 a.m. to 11:45 a.m. and thereafter, in closed session from 11:45 a.m. to 12:45 p.m. During the closed session, the committee will continue reviewing items from the Thursday, May 19 session, which includes secure items, tasks, and data addressing NAEP assessments in Mathematics, Reading, Science, U.S. History, Civics, and Geography. This meeting must be conducted in closed session because the test items and data are secure and have not been released to the public. Public disclosure of the secure test items would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

On May 19, 2017, R&D will meet in open session from 10:30 a.m. to 12:00 p.m. and thereafter in closed session from 12:05 p.m. to 12:45 p.m. During the closed session, the Committee will review data collected from core contextual variables included on NAEP. This session will feature unreleased results from pilot studies that are used to decide which variables to include in future administrations of NAEP. This meeting must be conducted in closed session because the pilot study results are secure and have not been released to the public. Public disclosure of the secure test items would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code. Following the closed session, R&D will meet in open session from 11:00 a.m. to 12:45 p.m.

On May 19, 2017, the Governing Board will meet in closed session from 1:00 p.m. to 2:15 p.m. to receive a briefing on the embargoed Mapping State Proficiency Standards onto the 2015 NAEP Reading and Mathematics Scales Report. This meeting is being conducted in closed session because the report has not been released to the public. Public disclosure of the secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 of the United States Code.

Thereafter, the Governing Board will take a fifteen-minute break and reconvene in open session from 2:30 p.m. to 3:00 p.m. The Executive Director of the Governing Board, William Bushaw, will provide his report, followed by an update on National Center for Education Statistics (NCES) work by Peggy Carr, Acting Commissioner of NCES. From 3:00 p.m. to 4:45 p.m. the Governing Board will meet in breakout sessions to discuss the Strategic Vision Goal # 9 on Policy Approaches to Revise NAEP Assessment Subjects and the NAEP Schedule.

The May 19, 2017 meeting will adjourn at 4:45 p.m.

On May 20, 2017, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. The committee will discuss the 2017 and 2018 nominations. The Nominations Committee's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

The Governing Board will meet in open session on May 20, 2017 from 8:30

a.m. to 10:15 a.m. to receive summaries of the prior day's discussion on Strategic Vision Goal # 9 followed by a discussion on Strategic Vision Goal #10 on New Approaches to Measuring Complex Skills Required for Postsecondary Education and Career.

The Governing Board will then take a fifteen minute break and reconvene in open session from 10:30 a.m. to 11:00 a.m. to receive an update on committee reports. From 11:00 a.m. to 11:45 a.m. the Governing Board will discuss Strategic Vision #7, Long-Term Options; this session will be led by Board member Joe Wilhoft, COSDAM Vice-Chair.

The May 20, 2017 meeting is scheduled to adjourn at 11:45 a.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* beginning on Monday, May 1, 2017 by 10:00 a.m. ET. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice. Although we will attempt to meet a request, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe Web site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Dated: May 8, 2017.

William J. Bushaw,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2017–09609 Filed 5–11–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0008]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Consolidation Loan Rebate Fee Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 12, 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–0008. 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 224–84 Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Consolidation Loan Rebate Fee Report.

OMB Control Number: 1845–0046.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 9,348.

Total Estimated Number of Annual Burden Hours: 10,127.

Abstract: The information collected on the Consolidation Loan Rebate Fee Report will be used to document Federal Consolidation loans held by lenders who are responsible for sending interest payment rebate fees to the Secretary of Education using ED Form 4–619.

Dated: May 9, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–09652 Filed 5–11–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2809–034]

KEI (Maine) Power Management (III) LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following application has been filed with the

Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. Project No.: 2809–034.

c. Date filed: April 28, 2017.

d. *Applicant:* KEI (Maine) Power Management (III) LLC (KEI Power).

e. *Name of Project:* American Tissue Hydroelectric Project.

f. *Location:* On Cobbosseecontee Stream, in the Town of Gardiner, Kennebec County, Maine. There are no federal or tribal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Lewis Loon, Operations and Maintenance Manager, USA, KEI (Maine) Power Management (III) LLC, 423 Brunswick Avenue, Gardiner, ME 04345; (207) 203–3026.

i. *FERC Contact:* John Baummer, 202–502–6837, or *john.baummer@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 27, 2017.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2809–034.

m. The application is not ready for environmental analysis at this time.

n. The existing American Tissue Hydroelectric Project consists of: (1) a 256-foot-long, 23-foot-high stone masonry and concrete dam that includes a 61-foot-long west abutment section, a 100-foot-long spillway section with 1.0-foot-high flashboards and a crest elevation of 123.3 feet mean sea level (msl), and a 95-foot-long east abutment section with an intake structure, inclined trashrack with 2-inch clear spacing, and three low level outlet gates; (2) a 5.5-acre, 1,000-foot-long impoundment with a normal maximum water surface elevation of 123.3 feet msl; (3) a 280-foot-long, 7-foot-diameter buried steel penstock; (4) a 37-foot-long, 34-foot-wide concrete and wooden powerhouse containing a single 1,000-kilowatt turbine-generator unit; (5) a 250-foot-long, 12-kilovolt transmission line; (6) a 300-foot-long tailrace; and (7) appurtenant facilities.

KEI Power operates the project in a run-of-river mode with an average annual generation of 5,430 megawatt-hours. KEI Power proposes to release year-round minimum flows of 10 cubic feet per second (cfs) into the bypassed reach and 52 cfs into the tailrace. KEI Power Management also proposes to improve the existing downstream fish passage facility and construct and operate a new upstream passage facility for American eel.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary), July 2017
Request Additional Information, July 2017
Issue Acceptance Letter, October 2017
Issue Scoping Document 1 for comments, November 2017
Request Additional Information (if necessary), January 2018
Issue Scoping Document 2, February 2018
Issue notice of ready for environmental analysis, February 2018
Commission issues EA or draft EA, August 2018
Comments on EA or draft EA, September 2018
Commission issues final EA, November 2018

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 5, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09625 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL17–70–000; QF17–935–001; QF17–936–001]

Zeeland Farm Services, Inc.; Notice of Petition for Declaratory Order

Take notice that on May 3, 2017, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) and section 292.203(d)(2)(2016) of the Commission's regulations, Zeeland Farm Services, Inc. (Zeeland) filed a petition for declaratory order requesting that the Commission grant Zeeland a limited waiver from the FERC Form 556 filing requirement for two qualifying small power production facilities, as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding 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) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 2, 2017.

Dated: May 4, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09682 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–112–000.

Applicants: Playa Solar 1, LLC, Playa Solar 2, LLC, EDF Renewable Energy, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action, Confidential Treatment, and Waivers of Playa Solar 1, LLC, et al.

Filed Date: 5/5/17.

Accession Number: 20170505–5227.

Comments Due: 5 p.m. ET 5/26/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4453–001.

Applicants: Santanna Natural Gas Corporation.

Description: Supplement to January 23, 2017 Notice of Material Change in Status of Santanna Natural Gas Corporation.

Filed Date: 5/3/17.

Accession Number: 20170503–5176.

Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: ER15–1905–005.

Applicants: Amazon Energy LLC.

Description: Notice of Change in Status of Amazon Energy LLC.

Filed Date: 5/3/17.

Accession Number: 20170503–5179.

Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: ER16–1923–003.

Applicants: LWP Lessee, LLC.

Description: Compliance filing: LWP Lessee Filing of Reactive Power Rate Schedule Approved in Settlement to be effective 8/14/2016.

Filed Date: 5/5/17.

Accession Number: 20170505–5193.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1555–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Amendment No. 1 to Service Agreement Nos. 338 and 339 to be effective 5/1/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5157.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1556–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–05–05_Data Sharing with Natural Gas Pipelines to be effective 7/5/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5177.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1557–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP–NCEMPA RS No. 200 Revised PPA to be effective 7/1/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5189.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1559–000.

Applicants: FirstEnergy Solutions Corp.

Description: Request for Authorization to Make Wholesale Power Sales to Affiliated Utility of FirstEnergy Solutions Corp.

Filed Date: 5/3/17.

Accession Number: 20170503–5175.

Comments Due: 5 p.m. ET 5/24/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09679 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Flat Top Wind I, LLC	EG17–56–000
Solar Star Oregon II, LLC	EG17–57–000
Whitney Point Solar, LLC	EG17–58–000
Westside Solar, LLC	EG17–59–000
RE Tranquillity 8 Amarillo LLC.	EG17–60–000
RE Tranquillity 8 Azul LLC	EG17–61–000
RE Tranquillity 8 Rojo LLC	EG17–62–000
RE Tranquillity 8 Verde LLC	EG17–63–000
Chambersburg Energy, LLC	EG17–64–000
Gans Energy, LLC	EG17–65–000
Hunlock Energy, LLC	EG17–66–000
Springdale Energy, LLC	EG17–67–000
Bath County Energy, LLC	EG17–68–000
Paulding Wind Farm IV LLC	EG17–69–000
Blue Summit Storage, LLC	EG17–70–000

Take notice that during the month of April 2017, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2016).

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09674 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–3–000]

Dominion Carolina Gas Transmission, LLC; Notice of Schedule for Environmental Review of the Line A Abandonment Project

On October 13, 2016, Dominion Carolina Gas Transmission, LLC (Dominion Carolina) filed an application in Docket No. CP17–003–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations to discontinue natural gas service and abandon natural gas pipelines and aboveground facilities in York, Chester, Lancaster, and Kershaw Counties, South Carolina. Dominion Carolina's proposed abandonment is referred to as the Line A Abandonment Project (Project).

On October 25, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA	June 30, 2017.
90-day Federal Authorization Decision Deadline.	September 28, 2017.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Dominion Carolina's Line A was originally installed in 1958 and now has integrity issues. The underground pipeline would be capped, filled with nitrogen, and abandoned in place. The pipeline to be abandoned includes 55 miles of 10-inch-diameter pipeline in York, Chester, Lancaster, and Kershaw Counties and 5 miles of 12-inch-diameter pipeline in York County. In addition three farm taps would be removed and aboveground facilities (including valves, regulators, or meters) would be removed at seven existing meter stations.

Dominion Carolina would also install new taps, piping, meters, and regulators at 12 existing meter stations in order to transfer the current feeds off of Line A into the its Line A–1–A pipeline.

Background

On February 7, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Line A Abandonment Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Muscogee Nation, the Choctaw Nation of Oklahoma, the Eastern Band of the Cherokee Indians Tribal Historic Preservation Office, and a landowner. The comments primarily concerned cultural resources.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP17–3), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: May 5, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09623 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–14–000]

East Texas Electric Cooperative, Inc.; Notice of Filing

Take notice that on May 4, 2017, East Texas Electric Cooperative, Inc. filed a supplement to its October 31, 2016 filed application for cost-based revenue requirements schedule for reactive power production capability.

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, 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. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 11, 2017.

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09675 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–10773–030]

Southern Southeast Regional Aquaculture Association; Notice of Application Accepted for Filing, Ready for Environmental Analysis, Soliciting Motions To Intervene and Protests, Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 10773–030.

c. *Date Filed:* October 27, 2016.

d. *Applicant:* Southern Southeast Regional Aquaculture Association.

e. *Name of Project:* Burnett River Hatchery Hydroelectric Project.

f. *Location:* The project is located on the Burnett River in the Wrangell Borough of Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bill Gass, Production Manager, Southern Southeast Regional Aquaculture Association, 14 Borch Street, Ketchikan, AK 99901, (907) 228–4390, *gass@ssraa.org.*

i. *FERC Contact:* Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 60 days from the issuance of this notice by the Commission; reply comments are due 105 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file any comments, motions to intervene, protests, recommendations, terms and conditions, and/or fishway prescriptions 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/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–10773–030.

k. *Description of Request:* The licensee is proposing to install at the powerhouse an additional 140-kilowatt (kW) generating unit coupled to the existing 80-kW unit, for a combined project installed capacity of 220 kW. The new unit will result in an increase of the project's hydraulic capacity from 6 to 15 cubic feet per second. The installation of the new unit will not require any physical changes to the project features since the powerhouse was designed to accommodate an additional generating unit. All work will occur within the existing powerhouse. The licensee is requesting the amendment to increase hatchery production at the project.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also 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 (*i.e.,* P–10773). You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

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, Motions to Intervene or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .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, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', ''PROTEST'', ''TERMS AND CONDITIONS'' or ''FISHWAY PRESCRIPTIONS'', as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, protests, recommendations, terms and conditions, or prescriptions should relate to project works which are the subject of the amendment request. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09676 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14818–000]

Watterra Energy, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On January 17, 2017, Watterra Energy, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Green River Lake Dam Hydroelectric Project (project), to be located at the existing U.S. Army Corps of Engineers' Green River Lake Dam on the Green River near the City of Campbellsville, Taylor County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application

during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 706-foot-long, 8-foot-diameter steel penstock lining the existing concrete conduit; (2) an 8-foot-long, 8-foot-wide bifurcation structure attached to the proposed penstock, with one branch extending to the proposed powerhouse, and the other branch providing an outlet point for the release of floodwaters; (3) a 70-foot-long, 55-foot-wide powerhouse containing two Francis generating units with a total capacity of 10.6 megawatts; (4) a 55-foot-long, 70-foot-wide switchyard; and (5) a 21,900-foot-long, 12.7 kilovolt transmission line. The estimated annual generation of the project would be 48.6 gigawatt-hours, and would operate as directed by the U.S. Army Corps of Engineers.

Applicant Contact: Mr. Craig Dalton, Watterra Energy, LLC, 220 West Main Street, Hamilton, MT 59840; phone: (406) 384–0080.

FERC Contact: Navreet Deo; phone: (202) 502–6304.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14818–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14818) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 5, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09627 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3279–001; ER10–3274 001; ER10–3275 001; ER10–3277 001; ER10–3278–001.

Applicants: Basin Creek Equity Partners L.L.C., Capitol District Energy Center Cogeneration Associates, Pawtucket Power Associates Limited Partnership, Forked River Power LLC, Pittsfield Generating Company, L.P.

Description: Notice of Change in Status of Basin Creek Equity Partners L.L.C., et al.

Filed Date: 5/1/17.

Accession Number: 20170501–5519.

Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER13–1536–014; ER10–2178–030; ER10–2181–034; ER10–2182–033; ER10–2192–030; ER15–1537–007; ER15–1539–007.

Applicants: Exelon Generation Company, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation Energy Services of New York, Inc., Constellation Energy Services, Inc., Constellation NewEnergy, Inc., Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.

Description: Notice of Change in Status of the Exelon MBR Entities.

Filed Date: 5/1/17.

Accession Number: 20170501–5500.

Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1543–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Tri-State Construct Agmt ? Monolith Tap IC to be effective 7/5/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5098.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1545–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Cost Reimbursement Agreement (SA 2335)—NMPC and New Athens Generating Company to be effective 4/5/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5039.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1547–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Queue Position AB2–061, Original Service Agreement No. 4695 to be effective 4/25/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5095.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1548–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Two True-Up SGIA's Golden Springs Development Company, LLC SA Nos. 541 & 545 to be effective 7/5/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5121.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1549–000.

Applicants: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc.

Description: Application of Entergy Services, Inc., on behalf of the Entergy Operating Companies for 2016 Transmission Formula Rate for Post-Retirement Benefits Other than Pensions.

Filed Date: 5/1/17.

Accession Number: 20170501–5526.

Comments Due: 5 p.m. ET 5/22/17.

Docket Numbers: ER17–1550–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to SA Nos. 3071 and 3072; Queue No. U1–059 and W1–056 re: Assignment to be effective 8/30/2011.

Filed Date: 5/5/17.

Accession Number: 20170505–5128.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1551–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule No. 286—4CA Participant Services Agreement to be effective 7/6/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5148.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1552–000.

Applicants: West Penn Power Company, Monongahela Power Company, Trans-Allegheny Interstate Line Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: West Penn et al submits revised Interconnection Agreement 1395 to be effective 6/1/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5149.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1553–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP-Fayetteville RS No. 184 Revised PPA to be effective 7/1/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5150.

Comments Due: 5 p.m. ET 5/26/17.

Docket Numbers: ER17–1554–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Open Access Transmission Tariff Housekeeping Revisions to be effective 5/8/2017.

Filed Date: 5/5/17.

Accession Number: 20170505–5152.

Comments Due: 5 p.m. ET 5/26/17.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–823–000.

Applicants: Gloversville-Johnstown Joint Wastewater.

Description: Refund Report of Gloversville-Johnstown Joint Wastewater Treatment Facility.

Filed Date: 5/1/17.

Accession Number: 20170501–5492.

Comments Due: 5 p.m. ET 5/22/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09622 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14837–000]

Advanced Hydropower, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 24, 2017, Advanced Hydropower, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the McNary Dam Advanced Hydropower Project (project) to be located at U.S. Corps of Engineer's (Corps) McNary Dam near Plymouth in Benton County, Washington and Umatilla in Umatilla County, Oregon. The purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would use the Corps' existing spillway bays 1 and 2 at the McNary Dam, and would consist of the following new facilities: (1) A 110-foot-wide, 440-foot-high intake channel with gates and trash racks from the existing spillway bays 1 and 2 of the McNary Dam spillway; (2) a 38-foot-wide, 40-foot-high, 50-foot-long concrete penstock; (3) a 49-megawatt Alden turbine; (4) a draft tube discharging flows to the existing tailrace; (5) a 1.5-mile-long, 13.8- or 23-kilovolt transmission line interconnecting with the existing McNary Dam switchyard; and (6) appurtenant facilities.[1] The estimated annual generation of the project would be 190 gigawatt-hours.

Applicant Contact: Mr. Kurt Ross, Advanced Hydropower, Inc., 925 Fairgrounds Road, Goldendale, Washington 98620; phone: (509) 773–5650.

FERC Contact: Kim Nguyen; phone: (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14837–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14837) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09677 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

[1] In a letter filed on April 11, 2017, the Corps states it believes the Commission lacks jurisdiction over hydropower development at the McNary Dam. However, the Corps also states it does not oppose the issuance of a preliminary permit on operational grounds despite noting several potential concerns with the proposal. *Compare Advanced Hydropower, Inc.,* 155 FERC ¶ 61,007 (2016) (denying preliminary permit application following Corps' February 8, 2016 comments opposing the project) *and Loxbridge Partners, LLC,* 156 FERC ¶ 62,163 (2016) (denying preliminary permit application following Corps' August 2, 2016 comments opposing the project and requesting that staff reject the permit application), *with Rivertec Partners, LLC,* 156 FERC ¶ 62,060 (2016) (issuing preliminary permit following Corps' April 13, 2016 comments that it has no objections to the permit application).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2684–010]

Flambeau Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2684–010.

c. *Date Filed:* April 26, 2017.

d. *Applicant:* Flambeau Hydro, LLC (Flambeau Hydro).

e. *Name of Project:* Arpin Hydroelectric Project.

f. *Location:* On the Chippewa River in Sawyer County, Wisconsin. There are no federal or tribal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jason Kreuscher, Renewable World Energies, LLC, 100 State Street, P.O. Box 264, Neshkoro, WI 54960; (855) 994–9376, ext. 102.

i. *FERC Contact:* Amy Chang, (202) 502–8250 or *amy.chang@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 25, 2017.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2684–010.

m. This application is not ready for environmental analysis at this time.

n. The existing Arpin Hydroelectric Project consists of: (1) A 742.5-foot-long masonry dam (West dam) that includes: (a) A 120.5-foot-long ungated, non-overflow section; (b) a 318.9-foot-long overflow spillway with a crest elevation of 1,227.55 feet North American Vertical Datum of 1988 (NAVD 88); and (c) a 303.1-foot long gated section that includes a 16.9-foot-wide timber stoplog spillway and a 15.9-foot-wide timber stoplog spillway; (2) a 452.2-foot-long masonry dam (Middle dam) that includes: (a) A 63.5-foot-long ungated, non-overflow section; (b) a 237.9-foot-long overflow spillway with a crest elevation of 1,227.65 feet NAVD 88; and (c) a 150.8-foot-long gated section that includes two 19.5-foot-wide steel vertical lift gates; (3) a 319.8-foot-long masonry dam (East dam) that includes: (a) A 25.5-foot long ungated, non-overflow section; (b) a 108-foot-long overflow spillway with a crest elevation of 1,227.8 feet NAVD 88; and (c) a 186.3-foot-long gated section that includes a 15.9-foot-wide, 6.25-foot-tall tainter gate and a 16.3-foot-wide, 6.25-foot-tall tainter gate; (4) a 294-acre impoundment with a normal maximum elevation of 1,227.32 feet NAVD 88; (5) a 3,200-foot-long, 60-foot-wide, 9- to 14-foot-deep earthen embankment power canal that includes 37-foot-long, 11.5-foot-wide, 14-foot-deep headworks; (6) a 48-foot-long, 13.5-foot-wide, 14.5-foot-tall concrete forebay and intake area that includes inclined trash racks with 2-inch spacing and three metal slide gates; (7) a 79-foot-long, 7-foot-diameter steel penstock and two 79-foot-long, 8-foot-diameter steel penstocks, each dedicated to a single turbine-generator unit; (8) a 52-foot-wide, 24-foot-long, 25-foot-tall cement block powerhouse containing two 600-kilowatt (kW) and one 250-kW vertical Francis turbine-generator units for a total capacity of 1,450-kW; (9) a 15-foot-long, 2.4-kilovolt (kV) underground generator lead that connects the turbine-generator units to three step-up transformers; (10) a 3,645-foot-long, 22.9-kV overhead transmission line that connects the step-up transformers to the regional distribution line; and (11) appurtenant facilities.

Flambeau Hydro operates the project in a run-of-river mode with an annual average generation of approximately 7,336 megawatt-hours. Flambeau Hydro is not proposing any new project facilities or changes in project operation.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)	July 2017.
Request Additional Information	July 2017.
Issue Acceptance Letter	October 2017.
Issue Scoping Document 1 for comments	October 2017.
Request Additional Information (if necessary)	December 2017.
Issue Scoping Document 2	January 2018.
Issue notice of ready for environmental analysis	March 2018.
Commission issues EA or draft EA	September 2018.
Comments on EA or draft EA	October 2018.
Commission issues final EA	January 2019.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 5, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09624 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–80–000.

Applicants: Ebensburg Power Company, Babcock & Wilcox Ebensburg Power, LLC, Ebensburg Investors Limited Partnership.

Description: Supplement to February 16, 2017 Application for Authorization of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act of Ebensburg Power Company, et al.

Filed Date: 5/3/17.

Accession Number: 20170503–5163.

Comments Due: 5 p.m. ET 5/15/17.

Docket Numbers: EC17–110–000.

Applicants: U.S. Gas & Electric, Inc., Energy Services Providers, Inc., Massachusetts Gas & Electric, Inc., Connecticut Gas & Electric, Inc., Equus Total Return, Inc.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Waivers, Confidential Treatment and Expedited Action of U.S. Gas & Electric, Inc., et al.

Filed Date: 4/28/17.

Accession Number: 20170428–5620.

Comments Due: 5 p.m. ET 5/19/17.

Docket Numbers: EC17–111–000.

Applicants: CSOLAR IV West, LLC.

Description: Application of CSOLAR IV West, LLC for Approval Under Section 203 of the Federal Power Act and Request for Expedited Action.

Filed Date: 5/1/17.

Accession Number: 20170501–5436.

Comments Due: 5 p.m. ET 5/22/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–453–007.

Applicants: Northeast Transmission Development, LLC, PJM Interconnection, L.L.C.

Description: Compliance filing: NTD submits compliance filing to Order issued April 6, 2017 re: NTD Formula Rate to be effective 2/1/2016.

Filed Date: 5/3/17.

Accession Number: 20170503–5128.

Comments Due: 5 p.m. ET 5/24/17.

Docket Numbers: ER17–1160–001.

Applicants: Entergy Arkansas, Inc.

Description: Tariff Amendment: EAI MSS–4 Amended PPAs to be effective 5/9/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5096.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1324–001.

Applicants: Playa Solar 2, LLC.

Description: Tariff Amendment: Amendment to MBR Tariff Application to be effective 3/29/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5068.

Comments Due: 5 p.m. ET 5/15/17.

Docket Numbers: ER17–1536–000.

Applicants: Southern Power Company.

Description: Petition for Limited Waiver of Southern Power Company and Request for Shortened Comment Period and Expedited Action.

Filed Date: 5/3/17.

Accession Number: 20170503–5170.

Comments Due: 5 p.m. ET 5/10/17.

Docket Numbers: ER17–1537–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO–Tex–La SPP PSA 456 Change to be effective 5/15/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5062.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1538–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO–Tex–La ERCOT PSA 456 Change to be effective 5/15/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5064.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1539–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO–ETEC PSA 456 Change to be effective 5/15/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5065.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1540–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO–NTEC PSA 456 Change to be effective 5/15/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5066.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1541–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO–ETEC–NTEC PSA 456 Change to be effective 5/15/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5067.

Comments Due: 5 p.m. ET 5/25/17.

Docket Numbers: ER17–1542–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Market Rule 1 Revisions to Cap Offers from Fast-Start Resources to be effective 7/3/2017.

Filed Date: 5/4/17.

Accession Number: 20170504–5094.

Comments Due: 5 p.m. ET 5/25/17.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–32–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Golden Spread Electric Cooperative, Inc.

Filed Date: 5/1/17.

Accession Number: 20170501–5435.

Comments Due: 5 p.m. ET 5/22/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern Time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 4, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09681 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Electric Quarterly Report Users Group Meeting

	Docket Nos.
Filing Requirements for Electric Utility Service Agreements.	RM01–8–000
Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.	RM10–12–000
Revisions to Electric Quarterly Report Filing Process.	RM12–3–000
Electric Quarterly Reports	ER02–2001–000

On March 29, 2017, the Federal Energy Regulatory Commission (Commission) issued a notice that Commission staff will hold an Electric Quarterly Report (EQR) Users Group meeting on May 16, 2017. The meeting will take place from 1:00 p.m. to 5:00 p.m. (EST), in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. All interested persons are invited to attend. For those unable to attend in person, access to the meeting will be available via webcast.

Staff is hereby supplementing the March 29, 2017 notice with the agenda for discussion. During the meeting, Commission staff and EQR users will discuss potential improvements to the EQR program and the EQR filing process, including: (1) Improvements made since the December 2016 EQR Users Group meeting, such as updates to the EQR Web page and Frequently Asked Questions (FAQs); (2) EQR extension requests; (3) data in five or fifteen-minute increments; (4) common error messages and solutions, and (5) open discussion about current topics and reporting practices. Please note that matters pending before the Commission and subject to ex parte limitations cannot be discussed at this meeting. An agenda of the meeting is attached.

Those interested in actively participating in the discussion are encouraged to attend in person. All interested persons (whether attending in person or via webcast) are asked to register online at *https://www.ferc.gov/whats-new/registration/05-16-17-form.asp.* There is no registration fee. Anyone with Internet access who wants to listen to the meeting can do so by navigating to *www.ferc.gov*'s Calendar of Events, locating the EQR Users Group Meeting on the Calendar, and clicking on the link to the webcast.

The webcast will allow persons to view and listen to the meeting. Questions during the meeting can be sent to *EQRUsersGroup@ferc.gov.*

Those who would like to participate in the discussion by telephone during the meeting should send a request for a telephone line to *EQRUsersGroup@ferc.gov* by 5:00 p.m. (EST) on May 9, 2017 with the subject line: EQR Users Group Meeting Teleconference Request.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the EQR Users Group meeting, please contact Don Callow of the Commission's Office of Enforcement at (202) 502–8838, or send an email to *EQRUsersGroup@ferc.gov.*

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

Agenda

EQR Users Group Meeting

Commission Meeting Room

Tuesday, May 16, 2017

1:00–1:30 p.m. *Welcome, Introductions and Logistics*

- Agenda Review
- Ex Parte Limitations
- Meeting Rules for Comments and Questions

1:30–2:15 p.m. *Progress Since Last Users Group Meeting*

- Updates and progress areas
- Updates to the EQR Web page

2:15–2:30 p.m. *EQR Extension Requests*

2:30–2:55 p.m. *EQR Data in Five and Fifteen Minute Increments*

2:55–3:10 p.m. *Break*

3:10–3:40 p.m. *Data Validation and Error Identification Issues*

- Common Error Messages and Solutions
- Potential Improvements and Feedback

3:40–4:45 p.m. *Open Discussion*

- Products Reported as ''Other'' Products
- Reporting Zero and Negative Quantities
- Questions and Comments

4:45–5:00 p.m. *Closing Remarks*

[FR Doc. 2017–09678 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–10773–030]

Southern Southeast Regional Aquaculture Association; Notice of Application Accepted for Filing, Ready for Environmental Analysis, Soliciting Motions To Intervene and Protests, Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 10773–030.

c. *Date Filed:* October 27, 2016.

d. *Applicant:* Southern Southeast Regional Aquaculture Association.

e. *Name of Project:* Burnett River Hatchery Hydroelectric Project.

f. *Location:* The project is located on the Burnett River in the Wrangell Borough of Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bill Gass, Production Manager, Southern Southeast Regional Aquaculture Association, 14 Borch Street, Ketchikan, AK 99901, (907) 228–4390, *gass@ssraa.org.*

i. *FERC Contact:* Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 60 days from the issuance of this notice by the Commission; reply comments are due 105 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file any comments, motions to intervene, protests, recommendations, terms and conditions, and/or fishway prescriptions 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/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The first page of any filing should include docket number P–10773–030.

k. *Description of Request:* The licensee is proposing to install at the powerhouse an additional 140-kilowatt (kW) generating unit coupled to the existing 80-kW unit, for a combined project installed capacity of 220 kW. The new unit will result in an increase of the project's hydraulic capacity from 6 to 15 cubic feet per second. The installation of the new unit will not require any physical changes to the project features since the powerhouse was designed to accommodate an additional generating unit. All work will occur within the existing powerhouse. The licensee is requesting the amendment to increase hatchery production at the project.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also 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 (*i.e.,* P–10773). You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

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, Motions To Intervene or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .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, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', ''PROTEST'', ''TERMS AND CONDITIONS'' or ''FISHWAY PRESCRIPTIONS'', as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, protests, recommendations, terms and conditions, or prescriptions should relate to project works which are the subject of the amendment request. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 5, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09626 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–730–000.

Applicants: Great Lakes Gas Transmission Limited Par.

Description: Operational Purchases and Sales Report of Great Lakes Gas Transmission LP.

Filed Date: 05/01/2017.

Accession Number: 20170501–5456.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–731–000.

Applicants: Blue Lake Gas Storage Company.

Description: Operational Purchases and Sales Report of Blue Lake Gas Storage Company.

Filed Date: 05/01/2017.

Accession Number: 20170501–5457.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–732–000.

Applicants: Bison Pipeline LLC.

Description: Operational Purchases and Sales Report of Bison Pipeline LLC.

Filed Date: 05/01/2017.

Accession Number: 20170501–5458.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–733–000.

Applicants: ANR Storage Company.

Description: Operational Purchases and Sales Report of ANR Storage Company.

Filed Date: 05/01/2017.

Accession Number: 20170501–5459.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–734–000.

Applicants: ANR Pipeline Company.

Description: Operational Purchases and Sales Report of ANR Pipeline Company.

Filed Date: 05/01/2017.

Accession Number: 20170501–5460.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–735–000.

Applicants: ANR Pipeline Company.

Description: Annual Cashout Surcharge Report of ANR Storage Company.

Filed Date: 05/01/2017.

Accession Number: 20170501–5461.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP17–736–000.

Applicants: Northern Border Pipeline Company.

Description: Operational Purchases and Sales Report of Northern Border Pipeline Company.

Filed Date: 05/01/2017.

Accession Number: 20170501–5471.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 15, 2017.

Docket Numbers: RP16–975–001.

Applicants: Venice Gathering System, L.L.C.

Description: Venice Gathering System, L.L.C. submits tariff filing per 385.602: Motion to Place Interim Settlement Rates Into Effect to be effective 6/1/2017.

Filed Date: 05/05/2017.

Accession Number: 20170505–5084.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, May 17, 2017.

Docket Numbers: RP17–724–000.

Applicants: Venice Gathering System, L.L.C.

Description: Venice Gathering System, L.L.C. submits tariff filing per 154.205(a): Motion to Withdraw Filing.

Filed Date: 05/05/2017.

Accession Number: 20170505–5170.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, May 17, 2017.

Docket Numbers: RP17–737–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits tariff filing per 154.204: Equitrans' Clean-Up Filing—May 2017 to be effective 6/5/2017.

Filed Date: 05/05/2017.

Accession Number: 20170505–5026.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, May 17, 2017.

Docket Numbers: RP17–738–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.203: Refund Report—Texas Eastern OFO Penalty Disbursment (Rate Schedule S–2).

Filed Date: 05/05/2017.

Accession Number: 20170505–5041.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, May 17, 2017.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 8, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–09672 Filed 5–11–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9033–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 05/01/2017 Through 05/05/2017 Pursuant to 40 CFR 1506.9

Notice:

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20170073, Draft, USACE, NC, Bogue Banks Master Beach Nourishment Project, Comment Period Ends: 06/26/2017, Contact: Mickey Sugg 910–251–4811

EIS No. 20170074, Final Supplement, USACE, WV, Bluestone Dam Safety Modification, Review Period Ends: 06/12/2017, Contact: Rebecca Rutherford 304–399–5924

EIS No. 20170075, Draft, BPA, ID, Crystal Springs Hatchery Program, Comment Period Ends: 06/26/2017, Contact: Jenna Peterson 503–230–3018

EIS No. 20170076, Final Supplement, USACE, MO, Mississippi River Between the Ohio and Missouri Rivers (Regulating Works), Review Period Ends: 06/12/2017, Contact: Kip Runyon 314–331–8396

EIS No. 20170077, Final, USFS, CO, Upper Monument Creek Landscape Restoration, Review Period Ends: 06/26/2017, Contact: John Dow 719–553–1476

EIS No. 20170078, Draft, USFWS, NE., Issuance of an Incidental Take Permit and Implementation of a Habitat Conservation Plan for the R-Project Transmission Line, Comment Period Ends: 07/11/2017, Contact: Eliza Hines 308–382–6468 ext. 204

EIS No. 20170079, Draft Supplement, USFS, WY, Shoshone National Forest Land Management Plan, Comment Period Ends: 08/10/2017, Contact: Casey McQuiston 307–578–5134

Dated: May 9, 2017.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–09680 Filed 5–11–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Grant Program Information Collection Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), as part of its continuing effort to reduce the paperwork burden of grant applicants and awardees in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. The information collection requests are FMCS forms: Application for Federal Assistance (SF–424), Accounting System and Financial Capability Questionnaire (LM–3), Request for Advance or Reimbursement SF–270 (LM–6), Financial Status Report SF–269a (LM–7), Project Performance (LM–8), and Grants Program Grantee Evaluation Questionnaire (LM–9). This information collection activity was previously approved by the Office of Management and Budget (OMB) and is requesting a reinstatement without change to the collection. This collection was assigned the control number 3076–0006.

DATES: Comments on this information collection must be received within 60 days of the **Federal Register** publication date to be assured of consideration.

ADDRESSES: Submit written comments by mail to the Labor-Management Cooperation Grants Program, Federal Mediation and Conciliation Service, 250 E Street SW., Washington, DC 20427 or by contacting the person whose name appears under the section headed, **FOR FURTHER INFORMATION CONTACT**.

Comments may be submitted by fax at (202) 606–3434 or via email to Linda Gray-Broughton, Grants Specialist at *lgbroughton@fmcs.gov*. All comments must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through email. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI''. A copy of the comment that contains CBI will be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by FMCS without prior notice. All written comments will be available for inspection on the 7th floor at the Washington, DC address above from 9:00 a.m. to 2:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Gray-Broughton, Grants Specialist, FMCS, 250 E Street SW., Washington, DC 20427. Telephone

number (202) 606–8181, email to *lgbroughton@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the complete agency forms are available from the Labor-Management Cooperation Grants Program by calling, faxing, or writing Linda Gray-Broughton at the address above. Please ask for forms by agency number.

I. Information Collection Requests

FMCS is seeking comments on the following information collection requests contained in FMCS agency forms.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0006.

Type of Request: Reinstatement of a collection without change in the substance or method of collection.

Affected Entities: Potential applicants and/or grantees who received our grant application kit. Also applicants who have received a grant from FMCS.

Frequency:

a. Three of the forms, the SF–424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7 and LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a ''similar information'' requirement could apply. Acceptance of a recent audit report without deficiencies is acceptable.

Abstract: Except for the FMCS Forms LM–3 and LM–9, the forms under consideration herein are either required or recommended in OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-public sector potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

Burden: The Application for Federal Assistance (SF–424) is an OMB form with no agency additions. The estimated average time burden per respondent: 30 minutes. Estimated average number of responses: 35. The Request for Advance or Reimbursement SF–270 (LM–6) and the Financial Status Report SF–269a (LM–7) are also OMB forms with no agency additions. The estimated average time burden per respondent per form: 30 minutes and approximate number of responses: 20. Project Performance (LM–8) had approximately 20 respondents and the estimated time per response is 20 minutes. FMCS Grants Program Evaluation Questionnaire (LM–9) number of respondents is approximately 10 and the estimated time per response is 60 minutes. The Accounting System and Financial Capability Questionnaire (LM–3) has approximately 20 respondents and the estimated time per response is 60 minutes.

II. Request for Comments

The FMCS is particularly interested in comments which:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, *e.g.* permitting electronic and fax submission of responses.

List of Subjects

Labor-Management Cooperation Grant Program and Information Collection Requests.

Dated: May 4, 2017.

Michael J. Bartlett,

Deputy General Counsel.

[FR Doc. 2017–09669 Filed 5–11–17; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2017.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Capitol of Texas Bancshares, Inc.,* Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Austin, Austin, Texas.

Board of Governors of the Federal Reserve System, May 9, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09655 Filed 5–11–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Child Abuse and Neglect Data System.

OMB No.: 0970–0424.

Description: The Administration on Children, Youth and Families in the U.S. Department of Health and Human Services (HHS) established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1988 and 1992 amendments (Pub. L. 100–294 and Pub. L. 102–295) to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports.

In 1996, the Child Abuse Prevention and Treatment Act was amended by Public Law 104–235 to require that any state receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (HHS) to provide specific data on child maltreatment, to the extent practicable. These provisions were retained and expanded upon in the 2010 reauthorization of CAPTA (Pub. L. 111–320). Item (17) below was enacted with the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22). The law goes into effect in 2017 and it is anticipated that states will begin reporting with FFY 2018 data. Item (18) below was enacted with the Comprehensive Addiction and Recovery Act of 2016 (CARA) (Pub. L. 114–198). The law goes into effect in 2017 and it is anticipated that states will begin reporting with FFY 2018 data. Each state to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

1. The number of children who were reported to the state during the year as victims of child abuse or neglect.

2. Of the number of children described in paragraph (1), the number with respect to whom such reports were—

A. substantiated;

B. unsubstantiated; or

C. determined to be false.

3. Of the number of children described in paragraph (2)—

A. the number that did not receive services during the year under the state program funded under this section or an equivalent state program;

B. the number that received services during the year under the state program funded under this section or an equivalent state program; and

C. the number that were removed from their families during the year by disposition of the case.

4. The number of families that received preventive services, including use of differential response, from the state during the year.

5. The number of deaths in the state during the year resulting from child abuse or neglect.

6. Of the number of children described in paragraph (5), the number of such children who were in foster care.

7.

A. The number of child protective service personnel responsible for the—

i. intake of reports filed in the previous year;

ii. screening of such reports;

iii. assessment of such reports; and

iv. investigation of such reports.

B. The average caseload for the workers described in subparagraph (A).

8. The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

9. The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

10. For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the state—

A. information on the education, qualifications, and training requirements established by the state for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

B. data of the education, qualifications, and training of such personnel;

C. demographic information of the child protective service personnel; and

D. information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.

11. The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.

12. The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

13. The annual report containing the summary of activities of the citizen review panels of the state required by subsection (c)(6).

14. The number of children under the care of the state child protection system who are transferred into the custody of the state juvenile justice system.

15. The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

16. The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).

17. The number of children determined to be victims described in subsection (b)(2)(B)(xxiv).

18. The number of infants identified under subsection (b)(2)(B)(ii), the number of infants identified for whom a plan of safe care was developed under subsection (b)(2)(B)(iii), and the number of infants identified for whom a referral was made for appropriate services, including services for the affected family or caregiver, under subsection (b)(2)(B)(iii)

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS) and the Agency File (additional aggregate data, which cannot be collected at the case level). Technical assistance will be provided so that all states may provide the Child File and Agency File data to NCANDS.

The reauthorization of CAPTA, subsection (b)(2)(B)(xxiv), specifies for ''requiring identification and assessment of all reports involving children known or suspected to be victims of sex trafficking (as defined in section 103(10) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102 (10)); and S. 178—38.'' To comply with the new reporting requirements for item 17, NCANDS will use a new field in the Child File.

The Children's Bureau proposes to modify the Child File by modifying the maltreatment fields.

- Add a new maltreatment type code, 7 = sex trafficked, to the existing Fields 26, 28, 30, 32 (Maltreatment-1 Type, Maltreatment-2 Type, Maltreatment-3 Type, Maltreatment-4 Type).

The reauthorization of CAPTA, subsection (b)(2)(B)(ii), specifies collecting the number of (A) screened-in and screened-out referrals from healthcare providers involved in the delivery or care of infants and who referred such infants born with and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder; (B) of those screened-in, for whom a plan of safe care was developed, under subsection (b)(2)(B)(iii); and (C) of those screened-in, for whom a referral was made for appropriate services, including services for the affected family or caregiver, under subsection (b)(2)(B)(iii). To comply with the new reporting requirements for item 18, NCANDS will use a combination of existing fields in the Child File and a new field in the Agency File.

The Children's Bureau proposes to modify the Agency File by adding 1 new field, under Section 2, Referrals and Reports.

- 2.5. Number of screened-out referrals from healthcare providers

involved in the delivery or care of infants and who referred such infants born with and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder.

The Children's Bureau proposes to modify the Child File by adding two new fields.

- *Field 151, Has A Safe Care Plan:* The Safe Care Plan field will establish a flag as to whether a child has a safe care plan.
- *Field 152, Referral to CARA-Related Services:* The Referral to CARA-related Services field will establish a flag as to whether a referral was made for appropriate services, including services for the affected family or caregiver.

Respondents: State governments, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component (Child File and Agency File)	52	1	149	7,717

Estimated Total Annual Burden Hours: 7,717.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information may be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–09684 Filed 5–11–17; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Organ Procurement and Transplantation Network, OMB No. 0915–0184—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than June 12, 2017.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (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: Organ Procurement and Transplantation Network OMB No. 0915–0184—Revision.

Abstract: HRSA is proposing additions and revisions to the following documents used to collect information from existing or potential members of the Organ Procurement and Transplantation Network (OPTN). The documents under revision include: (1) Application forms for individuals or organizations interested in membership in the OPTN; (2) application forms for OPTN members applying to have organ-specific transplant programs designated within their institutions; and (3) forms submitted by OPTN members to report certain personnel changes.

Need and Proposed Use of the Information: Membership in the OPTN is determined by submission of application materials to the OPTN (not to HRSA) demonstrating that the applicant meets all required criteria for membership and will agree to comply with all applicable provisions of the National Organ Transplant Act, as amended, 42 U.S.C. 273, *et seq.* (NOTA), OPTN Final Rule, 42 CFR part 121, OPTN bylaws, and OPTN policies. Section 1138 of the Social Security Act, as amended, 42 U.S.C. 1320b–8 (section 1138) requires that hospitals in which transplants are performed be members of, and abide by, the rules and requirements (as approved by the Secretary of Health and Human Services) of the OPTN, including those related to data collection, as a condition of participation in Medicare and Medicaid for the hospital. Section 1138 contains a similar provision for the organ procurement organizations (OPOs) and makes membership in the OPTN and compliance with its operating rules and requirements (as approved by the Secretary of Health and Human Services), including those relating to data collection, mandatory

for all OPOs. The membership application forms listed below enable prospective OPTN members to submit the information necessary for the OPTN to make membership decisions. Likewise, the designated transplant program application forms listed below enable OPTN members to submit the information necessary for the OPTN to make designation decisions.

New membership forms have been created for transplant centers seeking to perform Vascularized Composite Allograft (VCA) transplants, a new and emerging field. VCAs were added to the definition of organs covered by the rules governing the operation of the OPTN, effective July 3, 2014. The OPTN Board approved OPTN membership requirements for VCA programs during late 2015. Because a transplant hospital applying to be an OPTN-approved VCA transplant program must already have current OPTN approval as a designated transplant program for at least one other organ, the VCA membership forms were developed based on existing membership forms.

New forms and revisions to the current OPTN forms include the following:

- Organ-specific program and histocompatibility laboratory applications reflecting key personnel requirement revisions made to the OPTN bylaws (the bylaws revisions will be implemented upon approval of these forms);
- Program applications based on existing organ-specific program application forms, for programs seeking VCA transplantation approval. The OPTN Board of Directors has approved language modifying OPTN Policy 1.2 (definitions) to provide that VCAs, defined generally in OPTN Policy 1.2 include the following:
  - Upper limb (including, but not limited to, any group of body parts from the upper limb or radial forearm flap);
  - Head and neck (including, but not limited to, face including underlying skeleton and muscle, larynx, parathyroid gland, scalp, trachea, or thyroid);
  - Abdominal wall (including, but not limited to, symphysis pubis or other vascularized skeletal elements of the pelvis);
  - Genitourinary organs (including, but not limited to, uterus, internal/external male and female genitalia, or urinary bladder);
  - Glands (including, but not limited to adrenal or thymus);
  - Lower limb (including, but not limited to, pelvic structures that are attached to the lower limb and transplanted intact, gluteal region, vascularized bone transfers from the lower extremity, anterior lateral thigh flaps, or toe transfers);
  - Musculoskeletal composite graft segment (including, but not limited to, latissimus dorsi, spine axis, or any other vascularized muscle, bone, nerve, or skin flap); and
  - Spleen.

  Some of the program application forms for programs seeking VCA transplantation approval are specific to these body parts (*e.g.,* VCA Upper Limb Transplant Program Application), and others are classified as VCA Other Program Applications with a checklist to indicate which of the listed body parts the program seeks designation to transplant.
- Program applications based on an existing organ-specific application form for programs seeking designation as an intestine transplant program.
- Cover pages, based on existing cover pages for other organ types, for VCA new transplant program, VCA key personnel change, VCA other new transplant program, and VCA other key personnel change forms.
- Questions and tables reflecting new ordering and numbering for improved flow on various forms.

These forms are based on OPTN membership applications that organizations have completed in the past; the burden of completing the new and revised forms is minimized.

Likely Respondents: Likely respondents to this notice include the following: hospitals performing or seeking to perform organ transplants, organ procurement organizations, and medical laboratories seeking to become OPTN-approved histocompatibility laboratories.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested, including the time needed to: (1) Review instructions; (2) 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; (3) train personnel to respond to a collection of information; (4) search data sources; (5) complete and review the information collected; and (6) 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
A	New Transplant Member/Program Application—General	2	1	2	8	16
B	Kidney (KI) Designated Program Application	118	2	236	4	944
B	Liver (LI) Designated Program Application	59	2	118	4	472
B	Pancreas (PA) Designated Program Application	60	2	120	4	480
B	Heart (HR) Designated Program Application	92	2	184	4	736
B	Lung (LU) Designated Program Application	30	2	60	4	240
B	Islet (PI) Designated Program Application	2	2	4	3	12
B	Living Donor (LD) Recovery Program Application	42	2	84	3	252
B	VCA Head and Neck Designated Program Application	14	2	28	3	84
B	VCA Upper Limb Designated Program Application	17	2	34	3	102
B	VCA Abdominal Wall * Designated Program Application VCA Abdominal Wall—Kidney VCA Abdominal Wall—Liver VCA Abdominal Wall—Pancreas VCA Abdominal Wall—Intestine	13	2	26	3	78
B	VCA Other ** Designated Program Application	9	2	18	2	36
B	Intestine Designated Program Application	40	2	80	3	240
C	OPO New Application	0	1	0	4	0

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
D Histocompatibility Lab Application	3	2	6	4	24
E Change in Transplant Program Key Personnel	395	2	790	4	3,160
F Change in Histocompatibility Lab Director	25	2	50	2	100
G Change in OPO Key Personnel	10	1	10	1	10
H Medical Scientific Org Application	7	1	7	2	14
I Public Org Application	4	1	4	2	8
J Business Member Application	2	1	2	2	4
K Individual Member Application	4	1	4	1	4
Total = 25 forms	948		1,867		7,016

* There are 4 types of forms that can be used to apply for designation as a VCA Abdominal Wall Program.
** VCA Other Designated Program Application data based on four categories of ''others'' including genitourinary and lower limb as defined by the OPTN bylaws.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2017–09621 Filed 5–11–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before June 12, 2017.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.funncoleman@hhs.gov* or (202) 795–7714.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier 0990–New–30D for reference.

Information Collection Request Title: Pregnancy Assistance Fund (PAF) Performance Measures Collection, FY2017–FY2019 cohort.

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB of a new information collection request. In FY2017, OAH expects to award a new, 3-year cohort of Pregnancy Assistance Fund (PAF) grants. Performance measure data collection is a requirement of PAF grants and is included in the funding announcement.

Need and Proposed Use of the Information: The data collection will provide OAH with performance data to inform planning and resource allocation decisions; identify technical assistance needs for grantees; facilitate grantees' continuous quality improvement in program implementation; and provide HHS, Congress, OMB, and the general public with information about the individuals who participate in PAF-funded activities and the services they receive.

Likely Respondents: 20 PAF grantees (States and Tribes).

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	Average burden per response (in hours)	Total burden hours
Training	20	1	15/60	5
Partnerships and Sustainability	20	1	3	60
Dissemination	20	1	30/60	10
Reach and Demographics	20	1	645/60	215
Core Services	20	1	750/60	250
Education	20	1	7	140
Birth Outcomes	20	1	270/60	90
Self-Sufficiency Outcomes	20	1	90/60	30
Total	20	1	40	800

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2017–09639 Filed 5–11–17; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: 4040–0001]

Agency Information Collection Request. 60-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, *Grants.gov* (EGOV), Department of Health and Human Services, is publishing the following summary of a revision to an information collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed revision to the 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 690–7569. Send written comments and recommendations for the proposed information collections within 60 days of this notice directly to the *Grants.gov*.

Proposed Project

Research and Related Other Project Information Form

Revision of a Currently Approved Collection.

Office: Grants.gov.

Abstract: Grant applicants are required to provide additional information as a supplement to their application for Federal assistance to awarding agencies using the Research and Related Other Project Information form. If applicants use human subjects in their research, the applicant must adhere to 45 CFR 46 Subpart A, The Federal Policy for the Protection of Human Subjects (Common Rule). The Common Rule defined six exemptions from research guidelines. Two additional exemptions were added to revisions of the Common Rule on January 17, 2017 for a total of eight exemptions. The Research and Related Other Project Information form must be updated in order to accommodate the additional two exemptions.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Research and Related Other Project Information	137,669	1	1	137,669
Total	137,669			137,669

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2017–09638 Filed 5–11–17; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Evaluation of the Cooperative Agreements to Benefit Homeless Individuals (CABHI) Program (OMB No. 0930–0320)—Revision

SAMHSA is conducting a cross-site evaluation of the FY2016 cohort of the CABHI grant program. The CABHI Evaluation builds on a previous evaluation of SAMHSA's 2009–2012 homeless services grant programs (*i.e.,* Grants for the Benefit of Homeless Individuals, Services in Supportive Housing, and CABHI), under which the approved data collection tools were developed and implemented. SAMHSA is requesting approval from OMB to revise the burden inventory, which has been calculated based on the number of FY2016 CABHI grantees and potential future cohorts of grantees to be awarded in FY2017, and to revise some of the measures used on current tools.

In 2016, SAMHSA awarded 30 CABHI grants across three levels: States (up to $1.5 million per year), local governments (up to $800,000 per year), and communities (up to $400,000 per year). The grantees are united by the goal of enhancing and expanding infrastructure and capacity for mental health and substance abuse treatment and related support services for individuals experiencing chronic homelessness or veterans, families, or youth experiencing homelessness as a result of these conditions. This is accomplished through the provision of permanent supportive housing, behavioral health treatment, and recovery support services, and enrollment in health insurance, Medicaid, or other mainstream benefit programs. Potential grantees awarded in FY2017 will have the same funding options and grant requirements.

The primary task of the CABHI evaluation is to conduct a comprehensive process and outcome evaluation, addressing questions related to the implementation of the CABHI grant projects and the extent to which they were able to meet the program's goals. Process evaluation primarily represents what is done to and for the client (*e.g.,* services provided); this aspect of the evaluation will also include a focus on structure, or the resources available in the service

delivery system, which represent the capacity to deliver quality care, but not the care itself. The outcome evaluation will focus on outputs, which are the most immediate or proximal results of project activities (*e.g.,* changes in partner collaboration, the number of clients enrolled in mainstream benefits), and client outcomes, particularly those related to behavioral health and homelessness and housing instability. Data collection efforts that will support the evaluation are described below.

The Client Interview—Baseline and the Client Interview—6-Month Follow-up have been developed to provide descriptive information about clients, and assess changes in client outcomes and their association with project characteristics. The tools were developed based on review of the literature and consultation with a panel of national experts, grantees, and SAMHSA. The tools were successfully used with over 7,000 clients during the previous evaluation of SAMHSA's Homeless programs.

The Client Interview is comprised of questions (unique from SAMHSA's Government Performance and Results Act [GPRA] client-level tool) that measure the outcomes of interest and subpopulations of focus: homelessness, housing, treatment history, trauma symptoms, housing and treatment choice, burden and satisfaction, and criminal justice involvement. For the CABHI Evaluation, the Client Interview Baseline and 6-Month Follow-up have been updated to (1) reflect changes to the GPRA client-level tool which allowed the questions on military service to be removed, (2) align with the newest version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), (3) remove the Readiness to Change measure, and (4) add detailed housing and homelessness questions. For the 6-Month Follow-up only, questions documenting services and evidence based practices received were added to improve data on client service receipt. Immediately following the SAMHSA-required administration of the GPRA client-level tools, which are completed by enrolled clients for each grantee project at baseline and 6-month follow-up, the paper and pencil Client Interview will be administered face-to-face by the GPRA interviewer. Questions regarding perception of care and treatment coercion will be self-administered by participating clients and returned to the interviewer in a sealed envelope to be included in the full package mailed to the evaluation coordinating center. Client participation is voluntary; gift card incentives will be given at baseline worth a $15 value and at 6-month follow-up worth a $30 value. Clients will be assigned unique identifiers by local projects; responses will be recorded on a paper and pencil answer sheet, mailed by the grantee project to the evaluation coordinating center, and scanned into a secure dataset. This process will eliminate the need for data entry, thereby reducing cost and potential for data entry error, and ensuring privacy for evaluation data.

The Stakeholder Survey will be conducted with CABHI project stakeholders and partners via a web survey to assess the types of stakeholder partnerships involved in the CABHI projects, the services provided, and the effectiveness of implementation and collaboration in the CABHI projects. For the CABHI Evaluation, the survey has been divided into three waves so that questions are relevant to the current phase of grant implementation (*e.g.* wave 1 will be administered in year 1 of the project). Also, a section on healthcare services was added and the current section on collaboration was expanded to include new measures on collaboration. One wave of the survey will be administered each year of the three year grants. Each survey respondent will be issued a username and password to login to and complete the secure web-based survey. The web-based survey format will reduce burden on the respondent and minimize potential for measurement error.

Annual burden has increased from 4,006 to 5,098 hours per year as the response burden times have been revised to reflect real-world experience during the Homeless Programs evaluation and the number of respondents has been increased for the Stakeholder Survey.

ANNUALIZED BURDEN HOURS

Instrument/activity	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Baseline data collection (Clients)	5,827	1	5,827	0.42	2,447
6-month follow-up data collection (Clients)	4,662	1	4,662	0.5	2,331
Client Subtotal	[b] 5,827		10,489		4,778
Stakeholder Survey	780	1	780	0.41	320
Total	[b] 6,607		11,269		5,098

[a] Total respondent cost is calculated as hourly wage × time spent on survey × total number of responses.
[b] Estimated number of total unique respondents.

Written comments and recommendations concerning the proposed information collection should be sent by June 12, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2017–09631 Filed 5–11–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4305–DR; Docket ID FEMA–2017–0001]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4305–DR), dated March 16, 2017, and related determinations.

DATES: Effective May 3, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 16, 2017.

Alameda, Calaveras, Contra Costa, Inyo, Modoc, and Mono Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–09610 Filed 5–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0017; OMB No. 1660–0135]

Agency Information Collection Activities: Proposed Collection; Comment Request; Staffing for Adequate Fire and Emergency Response (SAFER) Grants

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the application for the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program. The SAFER program provides funding for the hiring of new firefighters and the recruitment and retention of volunteer firefighters.

DATES: Comments must be submitted on or before July 11, 2017.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2017–0017. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Dunham, Fire Program Specialist, FEMA, Grant Program Directorate, 202–786–9813. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 *et seq.*), as amended authorizes FEMA to comprise the submission of applications for the SAFER grants. The information collected is grant application information that is necessary to assess the needs of the applicants as well as the benefits to be obtained from the use of funds. The information collected through the program's application is the minimum necessary to evaluate grant applications and is necessary for FEMA to comply with mandates delineated in the law.

Collection of Information

Title: Staffing for Adequate Fire and Emergency Response (SAFER) Grants.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0135.

FEMA Forms: FEMA Form 080–0–4, Staffing for Adequate Fire and Emergency Response (SAFER) (General Questions All Applicants); FEMA Form 080–0–4a, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative); FEMA Form 080–0–4b, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative); FEMA Form 087–0–0–2, Staffing for Adequate Fire and Emergency Response Quarterly Report and Payment Request Form.

Abstract: FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicants' proposals in each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government; Not-for-Profit Institutions.

Number of Respondents: 2,330.

Number of Responses: 2,990.

Estimated Total Annual Burden Hours: 18,064 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $984,437.20. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $1,666,213.80.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

Dated: May 8, 2017.

Tammi Hines,

Records Management Program Chief (Acting), Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–09601 Filed 5–11–17; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4303–DR; Docket ID FEMA–2017–0001]

Nevada; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nevada (FEMA–4303–DR), dated February 17, 2017, and related determinations.

DATES: Effective April 5, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Haas, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Rosalyn L. Cole as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–09611 Filed 5–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4307–DR; Docket ID FEMA–2017–0001]

Nevada; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nevada (FEMA–4307–DR), dated March 27, 2017, and related determinations.

DATES: Effective April 5, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David Haas, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Rosalyn L. Cole as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–09608 Filed 5–11–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4309–DR; Docket ID FEMA–2017–0001]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4309–DR), dated April 21, 2017, and related determinations.

DATES: Effective April 21, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from severe winter storms, flooding, landslides, and mudslides during the period of January 30 to February 22, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75

percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Adams, Benton, Columbia, Franklin, Grant, Lewis, Lincoln, Pend Oreille, Skamania, Spokane, Wahkiakum, Walla Walla, and Whatcom Counties for Public Assistance.

All areas within the State of Washington are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–09613 Filed 5–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4310–DR; Docket ID FEMA–2017–0001]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–4310–DR), dated April 21, 2017, and related determinations.

DATES: Effective April 21, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Idaho resulting from severe winter storms and flooding during the period of February 5–27, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Idaho have been designated as adversely affected by this major disaster:

Bingham, Cassia, Elmore, Franklin, Gooding, Jefferson, Jerome, Lincoln, Minidoka, Twin Falls, and Washington Counties for Public Assistance.

All areas within the State of Idaho are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–09612 Filed 5–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4311–DR; Docket ID FEMA–2017–0001

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–4311–DR), dated April 21, 2017, and related determinations.

DATES: Effective April 21, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Utah resulting from severe winter storms and flooding during the period of February 7–27, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Utah have been designated as adversely affected by this major disaster:

Box Elder and Cache Counties for Public Assistance.

All areas within the State of Utah are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–09614 Filed 5–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2014–0048; FF06E220000–178–FXES11140600000]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Draft Habitat Conservation Plan for the R-Project Transmission Line and Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Nebraska Public Power District (NPPD) has applied for an incidental take permit under the Endangered Species Act (ESA) for the R-Project transmission line in north-central Nebraska. If issued, the permit would authorize the take of the federally endangered American burying beetle incidental to the construction, operation, and maintenance of the transmission line. We, the U.S. Fish and Wildlife Service (Service), announce the availability of the following documents related to the NPPD incidental take permit application for review and comment by the public and Federal, Tribal, State, and local governments: Draft Habitat Conservation Plan for the R-Project Transmission Line in Nebraska (HCP); Draft Environment Impact Statement of the R-Project HCP (DEIS); Draft Migratory Bird Conservation Plan (MBCP); and Draft Restoration Management Plan.

DATES: *Comment submission:* Written comments must be submitted by July 11, 2017.

Public meetings: We are holding three public meetings to share information and allow the public to provide oral and written comments on the DEIS and draft HCP. The meetings will be held from 7 p.m. to 9 p.m. on:

- Monday, June 12, 2017—Sutherland, NE.
- Tuesday, June 13, 2017—Thedford, NE.
- Wednesday, June 14, 2017—Burwell, NE.

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Eliza Hines (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call no later than one week before the meeting.

ADDRESSES: *Document availability:* The draft HCP, DEIS, draft MBCP and draft Restoration Management Plan are available via the Internet at the Federal eRulemaking Portal (*www.regulations.gov*) in Docket No. FWS–R6–ES–2014–0048. Information regarding the DEIS and accompanying documents is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**). Documents will also be available for public inspection by appointment (call 308–382–6468 extension 204) during normal business hours at the U.S. Fish and Wildlife Service, Nebraska Field Office, 9325 South Alda Road, Wood River, NE 68883.

Submitting comments: To send written comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft HCP. Please specify which documents your comment addresses: the DEIS, draft HCP, draft MBCP, or draft Restoration Management Plan.

- *Internet:* Submit comments at *http://www.regulations.gov* to Docket Number FWS–R6–ES–2014–0048.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2014–0048; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Public meetings: The public meetings discussed above in **DATES** will be held at the following locations in Nebraska:

- *Burwell:* American Legion Hall, 657 G Street, Burwell, NE 68823.
- *Sutherland:* Village Municipal Offices, 1200 First Street, Sutherland, NE 69165.
- *Thedford:* Thomas County Fairgrounds, 8386 Hwy 83, Thedford, NE 69166.

FOR FURTHER INFORMATION CONTACT: Eliza Hines, 308–382–6468 extension 204 (phone) or *eliza_hines@fws.gov* (email). If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We received an application from NPPD for an incidental take permit to authorize the incidental take of the federally endangered American burying beetle resulting from the construction, operation, and maintenance of the proposed R-Project transmission line and substations. The 345-kilovolt R-Project transmission line would be approximately 225 miles long in north-central Nebraska. As part of its application, NPPD prepared a draft HCP that describes actions to avoid, minimize, and mitigate impacts of incidental take of the American burying beetle. NPPD also prepared a Draft Restoration Management Plan to outline

restoration plans for beetle habitat as well as other habitats impacted by the R-Project. Additionally, NPPD developed a MBCP to address impacts to migratory birds and bald and golden eagles in a good faith effort to comply with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

In the DEIS, we analyze the potential impacts to the natural and human environment from implementing the proposed HCP and issuing the permit and from implementing the two alternatives to the proposed action. The DEIS also identifies alternatives that we considered but eliminated from further analysis.

Background

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). The term ''harm'' is defined in title 50 of the Code of Federal Regulations as ''an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering'' (50 CFR 17.3). The term ''harass'' is defined in the regulations as ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering'' (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the incidental take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental.
- The applicant will minimize and mitigate, to the maximum extent practicable, the impact of such taking.
- The applicant will develop an HCP and ensure that adequate funding for the plan will be provided.
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.
- The applicant will carry out any other measures that the Secretary of the Interior may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered species are at 50 CFR 17.22.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine whether the actions may significantly affect the human environment. Under NEPA and its implementing regulations (40 CFR 1500 *et seq.*), Federal agencies must also compare effects of a reasonable range of alternatives to the proposed action. In these analyses, the Federal agency will identify potentially significant direct, indirect, and cumulative effects, as well as possible mitigation for any significant effects, on biological resources, land use, air quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental resources that could occur with the implementation of the proposed action and alternatives. In accordance with NEPA, we prepared a DEIS to analyze the impacts to the natural and human environment that may occur if the Service were to issue the permit and NPPD were to implement the proposed R-Project HCP. We announced scoping for the DEIS in the **Federal Register** of October 30, 2014 (79 FR 64619).

Proposed Action

We propose to issue a 50-year permit for incidental take of the American burying beetle if NPPD's HCP meets all the section 10(a)(1)(B) permit issuance criteria. The permit would authorize take of the American burying beetle incidental to the proposed construction, operation, and maintenance, including emergency repairs, of the R-Project. NPPD would avoid the incidental take of other federally listed species by implementing avoidance measures presented in the draft HCP.

The permit area for the HCP is determined by the geographical area within which incidental take is expected to occur. The proposed permit area includes 1 mile on each side of the R-Project centerline from Stapleton, Nebraska, north to the Thedford Substation. The permit area also includes 4 miles on each side of the centerline from the Thedford Substation east to a new Holt County Substation. The varying permit area width incorporates all potential incidental take that may occur outside the transmission line right-of-way resulting from construction access, temporary work areas, staging sites, fly yards, or other ground disturbance from construction and maintenance.

The proposed R-Project transmission line would be constructed with tubular steel monopoles and steel lattice towers. Tubular steel monopoles require large equipment for installation and would be used where adequate access and established roads exist. Steel lattice towers would be used in the Sandhills where access routes are limited or do not exist. Lattice towers can be constructed with less overall effect on the surrounding area because smaller equipment and helicopter construction can be used.

The draft HCP describes a number of measures that NPPD would implement to avoid and minimize the incidental take of the beetle during construction, operations, and maintenance of the R-Project. Measures associated with restoration of beetle habitat, as well as other habitats, are outlined in the Restoration Management Plan. The HCP also commits NPPD to provide mitigation lands to conserve beetle habitat to fully offset temporary and permanent impacts of the remaining take. With these measures, construction of the R-Project would permanently destroy 33 acres of American burying beetle habitat and temporarily disturb an additional 1,250 acres of American burying beetle habitat over the term of the permit. NPPD would work with the Service to secure at least 500 acres of occupied American burying beetle habitat in perpetuity.

Alternatives Analyzed in the DEIS

In the DEIS, we also evaluate the effects on the natural and human environment from two alternatives to the proposed action: (1) No action (*i.e.,* no permit issuance), and (2) construction of the R-Project using only steel tubular monopole structures. Construction of tubular steel monopoles would require access roads to support heavy equipment. NPPD would construct temporary access routes where adequate ones do not exist. Associated levels of ground disturbance would require the permit to authorize higher levels of incidental take of the American burying beetle, and an associated HCP would need to expand conservation measures to minimize and fully offset the impacts of the incidental take.

The DEIS considers the direct, indirect, and cumulative effects of the two action alternatives, including measures intended to avoid, minimize, and mitigate such impacts. The DEIS also identifies alternative routing options that the Service considered but eliminated from detailed analysis.

The Service invites comments and suggestions from interested parties on the content of the DEIS. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of either action alternative could have on the natural and human environment.

2. Whether or not the impact on various aspects of the natural and human environment have been adequately analyzed.

3. Any other information pertinent to evaluating the effects of the proposed action on the natural and human environment.

Role of the Environmental Protection Agency in the EIS Process

The U.S. Environmental Protection Agency (EPA) is charged under section 309 of the Clean Air Act to review all Federal agencies' environmental impact statements (EISs) and to comment on the adequacy and acceptability of the environmental impacts of proposed actions in the EISs.

EPA also administers the database for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability each Friday in the **Federal Register**.

For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Public Comments

Written comments received become part of the public record associated with this action. 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 may request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations for incidental take permits (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Michael G. Thabault,

Assistant Regional Director–Ecological Services, Mountain-Prairie Region, U.S. Fish and Wildlife Service, Lakewood, Colorado.

[FR Doc. 2017–09366 Filed 5–11–17; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–571–572 and 731–TA–1347–1348 (Preliminary)]

Biodiesel From Argentina and Indonesia; Determinations

On the basis of the record [1] 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 biodiesel from Argentina and Indonesia, provided for in subheadings 3826.00.10 and 3826.00.30 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 governments of Argentina and Indonesia.

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.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On March 23, 2017, the National Biodiesel Board Fair Trade Coalition, Washington, DC filed a petition 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 biodiesel from Argentina and Indonesia. Accordingly, effective March 23, 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 Nos. 701–TA–571–572 and antidumping duty investigation Nos. 731–TA–1347–1348 (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 March 29, 2017 (82 FR 15541). The conference was held in Washington, DC, on April 13, 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 May 8, 2017. The views of the Commission are contained in USITC Publication 4690 (May 2017), entitled *Biodiesel from Argentina and Indonesia: Investigation Nos. 701–TA–571–572 and 731–TA–1347–1348 (Preliminary).*

By order of the Commission.

Issued: May 8, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09629 Filed 5–11–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1315 (Final)]

Ferrovanadium From Korea; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of ferrovanadium from Korea, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted this investigation effective March 28, 2016, following receipt of a petition filed with the Commission and Commerce by AMG Vanadium LLC of Cambridge, Ohio; Evergreen Metallurgical Company DBA Bear Metallurgical Company of Butler, Pennsylvania; Gulf Chemical and Metallurgical Corporation of Freeport, Texas; and Evraz Stratcor, Inc. of Hot Springs, Arkansas (collectively the Vanadium Producers and Reclaimers Association). The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of ferrovanadium from Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing 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** on December 5, 2016 (81 FR 87590). The hearing was held in Washington, DC, on March 21, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on May 8, 2017. The views of the Commission are contained in USITC Publication 4683 (May 2017), entitled *Ferrovanadium from Korea: Investigation No. 731–TA–1315 (Final).*

By order of the Commission.

Issued: May 8, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09630 Filed 5–11–17; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–021]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 18, 2017 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–638 (Fourth Review) (Stainless Steel Wire Rod from India). The Commission is currently scheduled to complete and file its determination and views of the Commission by June 6, 2017.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: May 9, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–09718 Filed 5–10–17; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0002]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Restoration of Firearms Privileges, ATF F 3210.1

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on March 14, 2017 allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 12, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact the Explosives Relief of Disabilities Program, National Center for Explosives Training and Research (NCETR) either by mail at 3750 Corporal Road, Redstone Arsenal, AL 35898, by email at *FROD@atf.gov,* or by telephone at 256–261–7640. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Restoration of Firearms Privileges

(3) *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number (If applicable): ATF F 3210.1

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: The information requested is collected to fulfill the requirements of 18 U.S.C. Chapter 44. Under Federal law, individuals prohibited from purchasing, possessing, receiving, or transporting firearms are permitted to apply for restoration of their firearms privileges. The information to be supplied must identify the specifics of the applicant's appeal for restoration of privileges. The information is investigated, processed, examined, and stored initially at ATF Headquarters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 250 respondents will take the survey, and it will take each respondent approximately 30 minutes to complete the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 125 hours, which is equal to (250 hours * .5 (30 mins).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 9, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09667 Filed 5–11–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0049]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for National Firearms Examiner Academy, ATF F 6330.1

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the *Federal Register*, on March 14, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 12, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Sheila Hopkins, Program Manager, ATF National Laboratory Center, either by mail at 6000 Ammendale Road, Beltsville, MD 20705–1250, by email at *Sheila.Hopkins@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for National Firearms Examiner Academy

(3) *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number: ATF F 6330.1.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: Federal Government.

Abstract: The Information requested on this form is necessary to process requests from prospective students to attend the ATF National Firearms Examiner Academy, and to acquire firearms and toolmark examiner training. The information collection is used to determine the eligibility of the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 75 respondents will utilize the form, and it will take each respondent approximately 12 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: The estimated annual public burden associated with this collection is 15 hours, which is equal to (75 respondents * .20 (12 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 9, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09668 Filed 5–11–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0090]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Firearms Act (NFA)—Special Occupational Taxes (SOT), (ATF Form 5630.5R, ATF Form 5630.5RC, and ATF Form 5630.7)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on February 24, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 12, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Gary Schaible, Office of Enforcement Programs and Services, National Firearms Act Division, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) either by mail at 99 New York Ave. NE., Washington, DC 20226, by email at *nfaombcomments@atf.gov,* or by telephone at 202 648–7165. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* National Firearms Act (NFA)—Special Occupational Taxes (SOT).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5630.5R, ATF Form 5630.5RC, and ATF Form 5630.7.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: ATF F 5630.7, NFA Special Tax Registration and Return National Firearms Act is completed and returned by businesses that are subject to Special Occupational Taxes under the National Firearms Act for either initial tax payment or business information changes. This form serves as both a return and a business registration. ATF F 5630.5R, NFA Special Tax Renewal Registration and Return and ATF F 5630.5RC, NFA Special Tax Location Registration Listing are preprinted forms sent to taxpayers for Special Occupation Taxes under the National Firearms Act. Taxpayers validate/correct the information and send the forms back with payment for the applicable tax year.

(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 6,000 taxpayers will complete forms ATF F 5630.5R and ATF F 5630.5RC in approximately 20 minutes (10 minutes for each form). It is also estimated that 350 new taxpayers will complete ATF F 5630.7 in its entirety in approximately 15 minutes. The combined total number of respondents for this information collection is 6,350, while the combined total response time is 35 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with ATF F 5630.5R and ATF F 5630.5RC is 2,000 hours. The total burden for ATF F 5630.7 is 88 hours. Therefore the estimated total public burden associated with this information collection is 2,088 hours which is equal to (6000 (# of respondents for ATF F 5630.5R and ATF F 5630.5RC) * .3333 (20 mins) + 350 (# of respondents for ATF F 5630.7) * .25 (15 mins).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 9, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09670 Filed 5–11–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin

Notice is hereby given that, on April 18, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin (''Permian Basin'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Anadarko, The Woodlands, TX; EP Energy E&P Company, L.P., Houston, TX; and Shell Oil Company, Houston, TX. The general area of Permian Basin's planned activity will involve outcrop investigation of deformation and mechanical stratigraphy in Permian strata exposed in and around the Permian Basin of Texas and New Mexico. The analysis will include characterizing the distribution, mechanisms, and orientations of small-scale deformation related to the Ancestral Rockies, Ouachita, Laramide, and Basin and Range tectonic events and the associated paleostress conditions. The investigation will continue into the subsurface, relating deformation to tectonic setting, structural position, and mechanical stratigraphy within productive and potentially productive portions of the Permian Basin.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–09618 Filed 5–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on April 19, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical Technology Enterprise Consortium (''MTEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arizona State University, Tempe, AZ; Humacyte, Morrisville, NC; Upside Biotechnologies, Ltd., Auckland, NEW ZEALAND; Institute for Applied Neurosciences, Charleston, SC; The North Carolina Biotechnology Center, Research Triangle Park, NC; Brainpaths LLC, Las Vegas, NV; Applied Research Associates, Inc., Albuquerque, NM; Magle Chemoswed AB, Lund, SWEDEN; Nano Terra, Inc., Cambridge, MA; Information Visualization and Innovative Research Inc., Sarasota, FL; Carnegie Mellon University, Pittsburgh, PA; Applied Research Center, Aiken, SC; CFD Research Corporation, Huntsville, AL; Military Health Research, Laurel, MD; Ripple LLC, Salt Lake City, UT; SimQuest, Annapolis, MD; and Full Spectrum Omega, Inc., Huntington Beach, CA, have been added as parties to this venture.

Also, Actuated Medical, Inc., Bellafonte, PA; North American Rescue, LLC, Greer, SC; Second Sight Medical Products, Inc., Sylmar, CA; Articulate Biomedical, LLC, Ithaca, NY; Agile Immersive, Arlington, VA; Techline, Willow Grove, PA; Axonova Medical, LLC, Philadelphia, PA; Gateway Biotechnology, Inc., Kent, OH; IDIQ Inc., Fallbrook, CA; University of Michigan, Ann Arbor, MI; and Eagle Applied Sciences, LLC, San Antonio, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on August 19, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2016 (81 FR 64508).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–09616 Filed 5–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on April 13, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Stark Aerospace, Inc., Columbus, MS; American Defense International, Inc., Washington, DC; Advance Concepts Engineering, LLC, Howell, NJ; Marotta Controls, Inc., Montville, NJ; Ideal Innovations Incorporated, Arlington, VA; Streamline Circuits Corp., Santa Clara, CA; Kongsberg Protech Systems USA Corporation, Johnstown, PA; Arnold Magnetic Technologies Corp., Rochester, NY; Satelles, Inc., Herndon, VA; Colorado School of Mines, Golden, CO; Modern Technology Solutions, Inc., Alexandria, VA; Columbia Gorge Research, LLC, Fairview, OR; Alakai Defense Systems, Inc., Largo, FL; Opto Knowledge Systems, Inc. (OKSI), Torrance, CA; EWI, Columbus, OH; Acquisition Systems Associates, Inc., Great Falls, VA; Navatek, Ltd., South Kingstown, RI; El Dorado Engineering, Inc., West Jordan, UT; Oceaneering International, Inc., Hanover, MD; Adaptive Methods Inc., Centreville, VA; ADA Technologies, Inc., Littleton, CO; American Technical Coatings, Inc. (DBA

ATC Materials, Inc.), Westlake, OH; McLaughlin Research Corporation, New London, CT; Spatial Integrated Systems, Inc., Virginia Beach, VA; Advanced Acoustic Concepts, LLC, Hauppauge, NY; ENSCO, Inc., Falls Church, VA; Arizona State University, Tempe, AZ; American Lightweight Materials and Manufacturing Innovation Institute (ALMMII), Detroit, MI; HRL Laboratories, LLC, Malibu, CA; Kearfott Corporation, Little Falls, NJ; SkyBridge Tactical, Tampa, FL; MIKEL, Inc., Fall River, MA; Teledyne Scientific & Imaging, LLC, Thousand Oaks, CA; Honeybee Robotics, Ltd., Brooklyn, NY; Metadyne Inc. (dba Towanda Metadyne Inc), Towanda, PA; Barber-Nichols Inc., Arvada, CO; Fraser Optics LLC, Feasterville-Trevose, PA; Advanced Technology and Research Corporation, Columbia, MD; Sonalysts, Inc., Waterford, CT; The University of Southern Mississippi, Hattiesburg, MI; nanoMetallix LLC, Saint Louis, MO; Houston Mechatronics, Inc., Webster, TX; Davis Defense Group, Inc., Stafford, VA; Sheltered Wings, Inc. dba Vortex Optics, Middleton, WI; Curtiss-Wright Electro-Mechanical Corporation, Cheswick, PA; Hodges Transportation Inc., dba Nevada Automotive Test Center, Silver Spring, NV; CRM Solutions Inc., Huntsville, AL; Thompson Gray Inc., Huntsville, AL; Oshkosh Defense LLC, Oshkosh, WI; Riverside Research Institute, New York, NY; EOS Defense Systems, Inc., Tucson, AZ; Invariant Corporation, Huntsville, AL; Choctaw Defense Manufacturing LLC, McAlester, OK; and TS2, LLC, Whiteford, MD, have been added as parties to this venture.

Also, CIRTEMO, LLC, Cayce, SC; Hydrosoft International, Livermore, CA; and Doolittle Institute, Inc., Fort Walton Beach, FL, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on February 3, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 6, 2017 (82 FR 12638).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–09617 Filed 5–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on April 10, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AuresTech, Inc., Tewksbury, MA; Motorola Solutions, Inc., Chicago, IL; Radiance Technologies, Inc., Huntsville, AL; OpenJAUS, LLC, Lake Mary, FL; JRC Integrated Systems, Inc., Washington, DC; Samsung Research America, Inc., Mountain View, CA; DynamicSignals LLC, Lockport, IL; AASKI Technology, Inc., Tinton Falls, NJ; and Warrior Support Solutions, LLC, Hollis, NH, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (72 FR 65424).

The last notification was filed with the Department on February 3, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 6, 2017 (82 FR 12637).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–09619 Filed 5–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0050]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; FBI National Academy: End-of Session Student Course Questionnaire; FBI National Academy: General Remarks Questionnaire

AGENCY: Bureau of Justice Statistics, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Curriculum Management Section (CMS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until July 11, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Keith Shirley, Unit Chief, Evaluation and Assessment Unit, Training Division, FBI Academy, Federal Bureau of Investigation, Quantico, Virginia 22135.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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:* FBI National Academy: End-of-Session Student Course Questionnaire and the FBI National Academy: General Remarks Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form is unnumbered. The applicable component within the Department of Justice is the Training Division, Federal Bureau of Investigation (FBI).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* End-of-Session Student Course Questionnaire: This information collection is FBI National Academy students that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

General Remarks Questionnaire: This information collection is FBI National Academy, these questionnaires have been designed to collect feedback from National Academy students regarding their courses and instructors. The results are used to help determine if the National Academy program is functioning as intended and meeting its goals and objectives. We will utilize the students' comments to improve the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Approximately 1,000 FBI National Academy students per year will respond to two types of questionnaires. (1) FBI National Academy: End-of-Session Student Course Questionnaire and (2) FBI National Academy: General Remarks Questionnaire. It is predicted we will receive a 75% response rate for both questionnaires. Each student will respond to seven Student Course questionnaires—one for each course they completed. The average time for reading the questionnaire directions is estimated to be two (2) minutes; the time to complete each questionnaire is estimated to be approximately 13 minutes. Thus the total time to complete one Student Course Questionnaire is 15 minutes and 105 minutes for all seven questionnaires. For the FBI National Academy: General Remarks Questionnaire, students will respond to one questionnaire. The average time for reading the questionnaire directions is estimated to be two (2) minutes; the time to complete the questionnaire is estimated to be approximately 10 minutes. Thus the total time to complete the General Remarks Questionnaire is 12 minutes. The total estimated time for both questionnaires per respondent is approximately 117 minutes or about 2 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection given that approximately 75% of those surveyed or (750) will respond, the total public burden for completing all questionnaires is 1462.5 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 9, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09644 Filed 5–11–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0021]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; FBI National Academy Post-Graduate Questionnaire for Graduates; FBI National Academy Graduate Questionnaire for Supervisors of Graduates

AGENCY: Bureau of Justice Statistics, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Curriculum Management Section (CMS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until July 11, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Keith Shirley, Unit Chief, Evaluation and Assessment Unit, Training Division, FBI Academy, Federal Bureau of Investigation, Quantico, Virginia 22135.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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:* FBI National Academy Post-Graduate Questionnaire for Graduates and FBI National Academy Post-Graduate Questionnaire for Supervisors of Graduates.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form is unnumbered. The applicable component within the

Department of Justice is the Training Division, Federal Bureau of Investigation (FBI).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: This information collection is FBI National Academy students that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

This information collection is FBI National Academy. These questionnaires have been designed to collect feedback from National Academy graduates and their supervisors to determine the type of impact the National Academy program had on their organization. The results are used to help determine if the National Academy program is functioning as intended and meeting its goals and objectives. We will utilize the students' comments to improve the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Approximately 1,000 FBI National Academy Post-Graduate Questionnaire for Graduates. It is predicted we will receive a 50% response rate. The average response time for reading the questionnaire directions for the FBI National Academy Post-Graduate Questionnaire for Graduates is estimated to be two (2) minutes; the time to complete each questionnaire is estimated to be 30 minutes. Thus the total time to complete the Post-Graduate Questionnaire for Graduates is 32 minutes.

The total estimated time to complete each questionnaire per respondent for each group is 32 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection given that approximately 50% of those surveyed or (500 from each group) will respond, the total public burden for completing all questionnaires is 533 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 9, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09645 Filed 5–11–17; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Prison Population Reports: Summary of Sentenced Population Movement—National Prisoner Statistics

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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 30 days until June 12, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact E. Ann Carson, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *elizabeth.carson@usdoj.gov;* telephone: 202–616–3496). Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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:* Summary of Sentenced Population Movement–National Prisoner Statistics.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers for the questionnaire are NPS–1b (Summary of Sentenced Population Movement) and NPS—1B(T) Prisoner Population Report—U.S. Territories. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* For the NPS–1B form, 51 central reporters (one from each state and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories, each disaggregated by sex:

(a) As of December 31, the number of prisoners within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in privately operated facilities, county or other local authority correctional facilities, or in other state or Federal facilities on December 31;

(c) Prison admission information in the calendar year for the following categories: New court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond;

(d) Prison release information in the calendar year for the following

categories: Expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other jurisdictions, and releases to appeal or bond;

(e) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(f) Number of inmates under physical custody on December 31 classified as non-citizens of the U.S. with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(g) Number of inmates under physical custody who are under 18 years of age;

(h) Testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31; and

(i) The aggregated rated, operational, and/or design capacities, by sex, of the state/BOP's correctional facilities at year-end.

For the NPS–1B(T) form, five central reporters from the U.S. Territories and Commonwealths of Guam, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, and American Samoa will be asked to provide information for the following categories for the calendar year just ended, and, if available, for the previous calendar year:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and an assessment of the completeness of these counts (complete, partial, or estimated)

(b) The number of inmates under jurisdiction on December 31 but in the custody of facilities operated by other jurisdictions' authorities solely to reduce prison overcrowding;

(c) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(d) The aggregated rated, operational, and/or design capacities, by sex, of the territory's/Commonwealth's correctional facilities at year-end.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* During data collection in 2018, 51 respondents will each take an average of 7 hours to complete the NPS–1B and 5 respondents will each taking an average of 2 hours to respond to the NPS–1B(T) form. Data collection conducted in 2019 and 2020 will require each respondent to spend an average of 6.5 total hours to respond to the NPS–1B form. 5 respondents, each taking an average of 2 hours to respond to the NPS–1B(T) form. The burden estimates are based on feedback from respondents, and the burden for data collected in 2019 and 2020 remains the same as the previous clearance. The burden for data collected in 2018 increased due to the addition of questions disaggregating the number of non-citizen in custody by sentence length and the source of these data.

6. *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 1,050 total burden hours associated with this collection for the three years of data collection, or approximately 350 hours for each year.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 9, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–09651 Filed 5–11–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, 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 of 1995. This 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension without change of a currently approved collection for the ''Producer Price Index'' survey. A copy of the proposed information collection request (ICR) 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 **ADDRESSES** section of this notice on or before July 11, 2017.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary-market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements.

PPI data provide a description of the magnitude and composition of price change within the economy, and serve a wide range of governmental needs. This family of indexes are closely followed, monthly statistics which are viewed as sensitive indicators of the economic environment. Price data are vital in helping both the President and Congress set fiscal-spending targets. Producer prices are monitored by the Federal Reserve Board Open Market Committee to help decide monetary policy. Federal policy-makers at the Department of Treasury and the Council of Economic Advisors utilize these statistics to help form and evaluate monetary and fiscal measures and to help interpret the general business environment. In addition, it is common to find one or more PPIs, alone or in combination with other measures, used to escalate the delivered price of goods for government purchases.

In addition to governmental uses, PPI data are regularly put to use by the private sector. Private industry uses PPI data for contract price adjustment. For one particular method of tax-related Last-In-First-Out (LIFO) inventory accounting, the Internal Revenue

Service suggests that firms use PPI data for making calculations. Private businesses make extensive use of industrial-price data for planning and operations. Price trends are used to assess the condition of markets. Firms commonly compare the prices they pay for material inputs as well as prices they receive for products that they make and sell with changes in similar PPIs.

Economic researchers and forecasters also put the PPI to regular use. PPIs are widely used to probe and measure the interaction of market forces. Some examples of research topics that require extensive price data include: The identification of varying price elasticities and the degree of cost pass-through in the economy, the identification of potential lead and lag structures among price changes, and the identification of prices which exert major impacts throughout market structures.

II. Current Action

Office of Management and Budget clearance is being sought for the PPI survey.

The PPI collection is not a one-time project with an end date. The purpose of the PPI collection is to accumulate data for the ongoing, monthly publication of the PPI family of indexes. The Bureau of Labor Statistics must continue collecting data for the PPI since both policy and business planning are affected by the completeness of the description of price trends. Dollar-denominated measures of economic performance, such as Gross Domestic Product, require accurate price data in order to convert nominal to constant-dollar values. Inflation-free national income accounting figures are vital to fiscal and monetary policy-makers when setting objectives and targets. It is conservatively estimated that hundreds-of-billions of dollars' worth of contracts and purchase agreements employ PPIs as part of price-adjustment clauses. Failure to calculate data would tend to extend the time frame required for accurate recognition of and appropriate adaptation to economic events.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• 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.

• 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.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Producer Price Index Survey.

OMB Number: 1220–0008.

Affected Public: Private Sector.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
BLS 1810A, A1, B, C, C1, and E	5,836	once	5,836	120	11,672
BLS 473P	20,600	monthly	*1,122,000	5	93,500
Totals	26,436		1,127,836		105,172

*For monthly repricing, PPI requests repricing of 93,500 items each month.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of April 2017.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2017–09602 Filed 5–11–17; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold six meetings of the Humanities Panel, a federal advisory committee, during June, 2017. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW., Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. *Date:* June 26, 2017.

This meeting will discuss applications on the subjects of the Classics, Philosophy, Religion, and European History, for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

2. *Date:* June 26, 2017.

This meeting will discuss applications on the subjects of the Arts, Media & Communication, Philosophy & Religion, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

3. *Date:* June 27, 2017.

This meeting will discuss applications on the subjects of World History, Linguistics, and the Social Sciences, for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

4. *Date:* June 27, 2017.

This meeting will discuss applications on the subject of Literature Studies, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

5. *Date:* June 28, 2017.

This meeting will discuss applications on the subjects of History & Politics, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

6. *Date:* June 29, 2017.

This meeting will discuss applications on the subjects of American History, American Studies & Social Sciences, for the Awards for Faculty grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: May 8, 2017.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2017–09600 Filed 5–11–17; 8:45 am]

BILLING CODE 7536–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–129 and CP2017–182]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: Comments are due May 15, 2017.

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

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
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).:* MC2017–129 and CP2017–182; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 317 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* May 5, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* May 15, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–09615 Filed 5–11–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32630; 812–14699]

New Mountain Finance Corporation, et al.

May 8, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an 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 one or more business development companies (each, a ''BDC'') and certain other closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

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 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.[1]

FILING DATES: The application was filed on September 12, 2016, and amended on February 1, 2017 and April 7, 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 June 2, 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, Chief Executive Officer, 787 Seventh Avenue, 48th Floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or David Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's 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 organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.[2] Applicants state that NMFC seeks to generate both current income and capital appreciation through the sourcing and origination of debt securities at all levels of the capital structure. 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'').

2. The NMFC Subsidiaries are wholly-owned subsidiaries 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(c)(7) of the Act.

3. SBIC LP, a Delaware limited partnership, received a license from the Small Business Administration to operate as a small business investment company. SBIC LP is a consolidated wholly-owned subsidiary of NMFC.

4. Guardian II is a private fund organized in Delaware on August 25, 2016. Both Guardian II Master A and Guardian II Master B are private funds organized as Cayman Islands exempted limited partnerships on January 3, 2017. The Guardian II Funds have not yet formally commenced principal operations. 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.

5. 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''). BDC Adviser serves as investment adviser to NMFC and will serve as investment adviser to the Guardian II Funds.

6. Applicants seek an order (''Order'') to permit one or more Regulated Funds[3] and/or one or more Affiliated Funds[4] 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;[5] and (b) making additional investments in securities of such issuers, including through the exercise 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, as defined below) 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.[6]

7. Applicants state any of the Regulated Funds may, from time to time, form one or more Wholly-Owned Investment Subs.[7] A Wholly-Owned Investment Sub would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or

[1] The term ''successor,'' as applied to an Adviser, means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[2] Section 2(a)(48) 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.

[3] ''Regulated Fund'' means 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.

[4] ''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) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

[5] 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 1933 (the ''Securities Act'').

[6] 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.

[7] The term ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% 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 Small Business Investment Act of 1958 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) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. Each of the NMFC Subsidiaries and SBIC LP 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.

Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. 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 requested 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, 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.

8. 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.[8] The Board of each Regulated Fund, including the Non-Interested Directors, has (or will have prior to relying on the requested Order) determined that it is in the best interests of the Regulated Fund to participate in Co-Investment Transactions.[9]

9. 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'')[10] will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

10. 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, 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.

11. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

12. 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 per cent 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-

[8] ''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 or Form 10, as applicable, other filings the Regulated Fund has made with the Commission under the Securities Act, or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

[9] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[10] 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).

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,[11] 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

[11] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

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.

(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 this 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 [12] (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

[12] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

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) any other matter under either the 1940 Act or applicable state law affecting the Board's composition, size or manner of election.

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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80619; File No. SR–NYSEMKT–2017–23]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Harmonize the Requirements of the NYSE MKT Company Guide With Respect to Periodic Reporting With Those of the NYSE

May 8, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 25, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize the requirements of the NYSE MKT Company Guide (the ''Company Guide'') with respect to periodic reporting with those of the NYSE. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize the requirements of the Company Guide with respect to periodic reporting with those of the NYSE. A consistent approach among the two NYSE sister exchanges will avoid confusion among investors and companies and their service providers about the applicable rules. Currently, the Exchange provides companies that are late in making required filings with a compliance plan under its general provisions for companies that are non-compliant with Exchange rules, as set forth in Section 1009 of the Company Guide. Section 1009 gives the Exchange the discretion to grant companies up to 18 months to cure events of noncompliance and does not provide specific guidance with respect to how compliance periods should be administered for companies late in submitting their filings. By contrast, Section 802.01E of the NYSE Listed Company Manual limits companies to a maximum cure period of 12 months to submit all delayed filings and includes specific provisions for determining how much time companies should be given to cure within the context of that maximum 12 months and what is required to be eligible for that additional time. As such, the Exchange believes that the NYSE's process for dealing with delayed filings is more stringent and more transparent than its own and believes that it is appropriate to harmonize its own process with that of the NYSE. The Exchange also proposes to harmonize its requirements with respect to semi-annual reporting by foreign private issuers with that of the NYSE, as the NYSE requirement is more precise. This greater precision will enable the Exchange to subject this semi-annual reporting obligation to the same compliance regime as it is proposing for other delayed filings.

Semi-Annual Reporting by Foreign Private Issuers

Section 110(d) of the Company Guide currently requires all foreign-incorporated listed companies to publish, at least semi-annually, an English language version of their interim financial statements. As part of its harmonization with the rules of the NYSE and adoption of a more explicit compliance approach,[4] the Exchange proposes to adopt new Section 110(e) as a more specific interim reporting requirement for listed foreign private issuers.[5] Under proposed Section 110(e), each listed foreign private issuer will be required, at a minimum, to submit to the SEC a Form 6–K that includes (i) an interim balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters. This Form 6–K must be submitted no later than six months following the end of the company's second fiscal quarter. The financial information included in the Form 6–K must be presented in English, but does not have to be reconciled to U.S. GAAP.

Amendments to Chapter Six of the Company Guide

Section 610(a) currently requires listed companies to provide specific enumerated disclosures with regard to outstanding options.[6] The Exchange

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Section 203.03 of the NYSE Listed Company Manual.

[5] Foreign-incorporated listed companies that are not foreign private issuers are required to file quarterly reports on Form 10–Q as domestic filers, so proposed Section 110(e) is not relevant to them. Existing Section 110(e) will be renumbered as Section 110(f).

[6] Section 610(a) provides that the company must disclose in its annual report to security holders, for the year covered by the report: (a) The number of unoptioned shares available at the beginning and at

proposes to eliminate these requirements. The Exchange notes that companies are required to include disclosure in their Form 10–K in relation to options available under equity compensation plans pursuant to Item 201(d) of Regulation S–K and options issued as executive compensation pursuant to Item 402 of Regulation S–K. Consequently, the Exchange believes it is appropriate to defer to the SEC in determining what disclosures should be required with respect to options and to delete its own disclosure requirements from Section 610(a).

Section 610(a) currently specifies that a company that fails to file its annual report on Forms 10–K, 20–F, 40–F or N–CSR with the SEC in a timely manner is subject to delisting pursuant to Section 1002(d). The Exchange proposes to amend this provision to provide that companies delayed in making these filings will be subject to proposed Section 1007 as discussed below.

Prior to an amendment to Section 610 in 2009,[7] Section 610 required a listed company to physically deliver its annual report filed with the SEC to shareholders each year. In its amended form, Section 610 no longer requires companies to physically deliver their annual reports but relies instead on the fact that listed company annual reports are available on the SEC Web site and are required to be made available on or through the Web site of the applicable listed company. Proposed Section 1007 as described below establishes compliance procedures for companies that are delayed in filing their annual reports with the SEC. In light of the foregoing, the Exchange proposes to delete Sections 611 (Time of Publication), 612 (Request for Extension) and 613 (Good Cause for Delay) of the Company Guide in their entirety. Section 611 specifies timeframes within which a company's hard copy annual report must be submitted to the Exchange and distributed to shareholders. The Exchange proposes to delete this provision as Section 610 no longer requires the delivery of hard copy annual reports and proposed Section 1007 will include detailed compliance requirements with respect to delayed annual report filings. Similarly, Section 612 sets forth a process for companies to request an extension of time from the Exchange to distribute hard copy annual reports to their shareholders. The Exchange proposes to delete this requirement, as companies are not required to deliver hard copy annual reports under the current rules and proposed Section 1007 will establish a process for granting companies additional time when they are delayed in submitting their annual reports to the SEC. Section 613 specifies circumstances under which good cause may exist for a company being delayed in publishing its annual report. The Exchange proposes to delete this provision, as in the future all determinations as to the continued listing of companies that are delayed in their annual report filings will be made pursuant to the provisions of proposed Section 1007.

Section 610(b) makes reference to providing notice of material news to the Exchange's StockWatch and Listing Qualifications Departments. The Exchange proposes to delete these references as those departments now have different names. In their place, the Exchange proposes to include a statement that companies should comply with the Exchange's material news policies set forth in Sections 401 and 402 of the Company Guide by providing notice to the Exchange's Market Watch Group pursuant to the material news notification requirements of Sections 401 and 402.

Section 610(b) currently provides that a listed company that receives an audit opinion that contains a going concern ''qualification'' must make a public announcement through the news media disclosing the receipt of such qualified opinion. The Exchange proposes to replace the reference to a going concern ''qualification'' with a reference to a going concern ''emphasis'' as this is a more correct characterization under the accounting literature. In addition, the Exchange proposes to provide that the public announcement of the existence of a going concern emphasis in an audit opinion must be made contemporaneously with the filing of the SEC report including the going concern emphasis, rather than within seven calendar days of such filing as is currently the case. The Exchange believes a going concern emphasis is material to investors and should be immediately disclosed.

Proposed Section 1007 SEC Annual and Quarterly Report Timely Filing Criteria

Under proposed Section 1007, a company will incur a late filing delinquency and be subject to the procedures set forth in Section 1007 on the date on which any of the following occurs:

- The company fails to file its annual report (Forms 10–K, 20–F, 40–F or N–CSR) or its quarterly report on Form 10–Q or semi-annual report on Form N–CSR (''Semi-Annual Form N–CSR'') with the SEC by the date such report was required to be filed by the applicable form, or if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, Form 10–Q, or Semi-Annual Form N–CSR (for purposes of this Section 1007, the later of these two dates, along with any Semi-Annual Report Filing Due Date as defined below, will be referred to as the ''Filing Due Date'' and the failure to file a report by the applicable Filing Due Date, a ''Late Filing Delinquency'');
- a listed foreign private issuer fails to file the Form 6–K containing semi-annual financial information required by proposed Section 110(e) (the ''Semi-Annual Report'') by the date specified in that rule (the ''Semi-Annual Report Filing Due Date'');
- the company files its annual report without a financial statement audit report from its independent auditor for any or all of the periods included in such annual report (a ''Required Audit Report'' and the absence of a Required Audit Report, a ''Required Audit Report Delinquency'');
- the company's independent auditor withdraws a Required Audit Report or the company files a Form 8–K with the SEC pursuant to Item 4.02(b) thereof disclosing that it has been notified by its independent auditor that a Required Audit Report or completed interim review should no longer be relied upon (a ''Required Audit Report Withdrawal Delinquency''); or
- the company files a Form 8–K with the SEC pursuant to Item 4.02(a) thereof to disclose that previously issued financial statements should no longer be relied upon because of an error in such financial statements or, in the case of a foreign private issuer, makes a similar disclosure in a Form 6–K filed with the SEC or by other means (a ''Non-Reliance Disclosure'') and, in either case, the company does not refile all required corrected financial statements within 60 days of the issuance of the Non-Reliance Disclosure (an ''Extended Non-Reliance Disclosure Event'' and, together with a Late Filing Delinquency, a Required Audit Report Delinquency and a Required Audit Report Withdrawal Delinquency, a ''Filing Delinquency'') (for purposes of the cure periods described below, an Extended Non-Reliance Disclosure Event will be

the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.

[7] *See* Securities Exchange Act Release No. 59685 (April 1, 2009); 74 FR 16031 (April 8, 2009) (SR–NYSEMKT–2009–04).

deemed to have occurred on the date of original issuance of the Non-Reliance Disclosure); if the Exchange believes that a company is unlikely to refile all required corrected financial statements within 60 days after a Non-Reliance Disclosure or that the errors giving rise to such Non-Reliance Disclosure are particularly severe in nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable company has incurred a Filing Delinquency as a result of such Non-Reliance Disclosure.

The Exchange will also deem a company to have incurred a Filing Delinquency if the company submits an annual report, Form 10–Q, or Semi-Annual Form N–CSR to the SEC by the applicable Filing Due Date, but such filing fails to include an element required by the applicable SEC form and the Exchange determines in the Exchange's sole discretion that such deficiency is material in nature.[8]

The annual report, Form 10–Q, Semi-Annual Form N–CSR or Semi-Annual Report that gives rise to a Filing Delinquency shall be referred to herein and in proposed Section 1007 as the ''Delinquent Report.''

Subsequent Late Reports. A company that has an uncured Filing Delinquency will not incur an additional Filing Delinquency if it fails to file a subsequent annual report, Form 10–Q, Semi-Annual Form N–CSR or Semi-Annual Report (a ''Subsequent Report'') by the applicable Filing Due Date for such Subsequent Report. However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.

Notification and Cure Periods. Upon the occurrence of a Filing Delinquency, the Exchange will promptly (typically within five business days) send written notification (the ''Filing Delinquency Notification'') to a company of the procedures set forth below. Within five days of the date of the Filing Delinquency Notification, the company will be required to (a) contact the Exchange to discuss the status of the Delinquent Report and (b) issue a press release disclosing the occurrence of the Filing Delinquency, the reason for the Filing Delinquency and, if known, the anticipated date such Filing Delinquency will be cured via the filing or refiling of the applicable report, as the case may be. If the company has not issued the required press release within five days of the date of the Filing Delinquency Notification, the Exchange will issue a press release stating that the company has incurred a Filing Delinquency and providing a description thereof.

During the six-month period from the date of the Filing Delinquency (the ''Initial Cure Period''), the Exchange will monitor the company and the status of the Delinquent Report and any Subsequent Reports, including through contact with the company, until the Filing Delinquency is cured.[9] If the company fails to cure the Filing Delinquency within the Initial Cure Period, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Cure Period'') depending on the company's specific circumstances. If the Exchange determines that an Additional Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 1010 of the Company Guide. A company is not eligible to follow the procedures outlined in Section 1009 with respect to these criteria. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a company any Initial Cure Period or Additional Cure Period, as the case may be, at all or (ii) at any time during the Initial Cure Period or Additional Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the company is subject to delisting pursuant to any other provision of the company Guide, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 1001–1006 of the Company Guide.

The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Cure Period or Additional Cure Period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors, including but not limited to:

- Whether there are allegations of financial fraud or other illegality in relation to the company's financial reporting;
- the resignation or termination by the company of the company's independent auditor due to a disagreement;
- any extended delay in appointing a new independent auditor after a prior auditor's resignation or termination;
- the resignation of members of the company's audit committee or other directors;
- the resignation or termination of the company's chief executive officer, chief financial officer or other key senior executives;
- any evidence that it may be impossible for the company to cure its Filing Delinquency within the cure periods otherwise available under this rule; and any past history of late filings.

In determining whether an Additional Cure Period after the expiration of the Initial Cure Period is appropriate, the Exchange will consider the likelihood that the Delinquent Report and all Subsequent Reports can be filed or refiled, as applicable, during the Additional Cure Period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate. If the Exchange determines that an Additional Cure Period is appropriate and the company fails to file the Delinquent Report and all Subsequent Reports by the end of such

[8] The following is a non-exclusive list of scenarios involving material filing elements that would cause the Exchange to deem the company to have incurred a Late Filing Delinquency: The filing does not include required financial statements or a required audit opinion; a required financial statement audit opinion includes qualifying or disclaiming language or the auditor provides an adverse financial statement audit opinion; a required financial statement audit opinion is unsigned or undated; there is a discrepancy between the period end date for required financial statements and the date cited in the related audit report; the company's auditor has not conducted a SAS 100 review with respect to the company's Form 10–Q; required chief executive officer or chief financial officer certifications are missing; a Sarbanes-Oxley Act Section 404 required internal control report or auditor certification is missing; the filing does not comply with the applicable SEC XBRL requirements; or the filing does not include signatures of officers or directors required by the applicable form.

[9] Under the proposed rule, a company that has an uncured Filing Delinquency would not incur an additional Filing Delinquency if it fails to file a Subsequent Report by the applicable Filing Due Date. However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.

Additional Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Section 1010. In no event will the Exchange continue to trade a company's securities if that company (i) has failed to cure its Filing Delinquency or (ii) is not current with all Subsequent Reports, on the date that is twelve months after the company's initial Filing Delinquency.

The Exchange proposes that the proposed amendments will become operative immediately upon approval by the SEC. Any company that is delayed in making a filing that would be subject to proposed Section 1007 will continue to be subject to the compliance plan provisions of Section l009 in relation to that delayed filing but will be subject to proposed Section 1007 in relation to any subsequent delayed filings.

The Exchange proposes to include a cross-reference to proposed Section 1007 in Section 1101 of the Company Guide, which discusses SEC filing obligations of listed companies. The Exchange also proposes to remove a reference to a company's Listing Qualifications analyst in Section 1101 and replace it with a reference to Exchange staff, as the Exchange no longer has a department under the Listings Qualification title.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [10] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because: (i) It strengthens the Exchange's continued listing requirements with respect to delinquent SEC filings by deeming companies delinquent if they fail to file their annual report or Form 10–Q on a timely basis and by subjecting companies to the late filer process if there are material inadequacies in their required annual or quarterly filings; and (ii) the more stringent requirements will encourage listed companies to submit timely and compliant periodic reports to the SEC.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed amendments to the Company Guide do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not affect competition in any way, but rather simply seeks to protect investors by insuring that companies cannot remain listed for any extended period of time without appropriately filing their required periodic financial reports with the SEC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2017–23 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–NYSEMKT–2017–23. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–23, and should be submitted on or before June 2, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09607 Filed 5–11–17; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] The amended procedures in relation to delayed periodic reports are more stringent than those currently in effect primarily because proposed Section 1007 would allow a company to remain listed for a maximum of 12 months from the filing due date of a delayed periodic report, while current rules give the Exchange the discretion to continue the listing for a period of up to 18 months.

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2017–0024]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information

collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new information request and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)
Office of Management and Budget
Attn: Desk Officer for SSA
Fax: 202–395–6974
Email address: OIRA_Submission@omb.eop.gov
(SSA)
Social Security Administration, OLCA, *Attn:* Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235.
Fax: 410–966–2830.
Email address: OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2017–0024].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 11, 2017. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. BBA 826

PRA 60-day Federal Register Notice (first notice)

myWageReport—0960–NEW.

Overview

SSA is creating a new electronic wage reporting application, myWageReport.

Background

Social Security Disability Insurance (SSDI) beneficiaries receive payments based on their ability to engage in substantial gainful activity because of a physical or mental condition. SSA requires SSDI beneficiaries or their representative payees to report when beneficiaries return to work, when their amount of work increases, or when their earnings increase. Currently, SSDI beneficiaries can call our 800 number; visit a local field office (FO); or mail paystubs and earnings to their local field offices to report this information.

Section 826 of the Bipartisan Budget Act (BBA) of 2015, Public Law 114–74, requires SSA to offer SSDI beneficiaries the same electronic/automated receipt wage reporting methods available to Supplemental Security Income recipients, including the Internet. Accordingly, we are creating a new Internet reporting system for this purpose, myWageReport.

myWageReport

The myWageReport application will enable SSDI beneficiaries and representative payees to report earnings electronically. It will also generate a receipt for the beneficiary and/or representative payee, thus providing confirmation that SSA has received the earnings report.

SSA will screen the information submitted through the myWageReport application and will determine if we need additional employment information. If so, agency personnel will reach out to beneficiaries or their representative payees and will use Form SSA–821, Work Activity Report (0960–0059), to collect the additional required information.

The respondents for this collection are SSDI recipients or their representative payees.

Type of Request: New Information Collection Request.

Modality of completion	Number of respondents	Frequency of response (per annum)	Average burden per response (minutes)	Estimated total annual burden (hours)
myWageReporting	54,000	1	7	6,300

2. Marital Relationship Questionnaire—20 CFR 416.1826—0960–0460. SSA uses Form SSA–4178, Marital Relationship Questionnaire, to determine if unrelated individuals of the opposite sex who live together are misrepresenting themselves as husband and wife. SSA needs this information to determine whether we are making correct payments to couples and individuals applying for or currently receiving Supplemental Security Income (SSI) payments. The respondents are applicants for and recipients of SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
MSSICS	1,275	1	5	106
SSA–4178	3,825	1	5	319
Totals	5,100			425

3. Social Security Benefits Application—20 CFR 404.310–404.311, 404.315–404.322, 404.330–404.333, 404.601–404.603, and 404.1501–404.1512—0960–0618. Title II of the Social Security Act (Act) provides retirement, survivors, and disability benefits to members of the public who meet the required eligibility criteria and file the appropriate application. This collection comprises the various application methods for each type of benefits. SSA uses the information we gather through the multiple information collection tools in this information collection request to determine applicants' eligibility for specific Social Security benefits, as well as the amount

of the benefits. Individuals filing for disability benefits can, and in some instances SSA may require them to, file applications under both Title II, Social Security disability benefits, and Title XVI, SSI payments. We refer to disability applications filed under both titles as ''concurrent applications.'' This collection comprises the various application methods for each type of benefits. These methods include the following modalities: Paper forms (Forms SSA–1, SSA–2, and SSA–16); Modernized Claims System (MCS) screens for in-person interview applications; and Internet-based iClaim and iAppointment applications. SSA uses the information we collect through these modalities to determine: (1) The applicants' eligibility for the above-mentioned Social Security benefits and (2) the amount of the benefits. The respondents are applicants for retirement, survivors, and disability benefits under Title II of the Act.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA				
Paper version/SSA–1	1811	1	11	332
Interview/MCS	1,438,058	1	10	239,676
Medicare Only SSA–1 Paper form (abbreviate)	173	1	7	20
Medicare Only—Interview/MCS	204,380	1	7	23,844
Totals	1,644,422			263,872
SSA–2				
Paper version/SSA–2	972	1	15	243
Interview/MCS	447,610	1	14	104,442
Totals	448,582			104,685
SSA–16				
Paper version/SSA–16	40,346	1	20	13,449
Interview/MCS	1,159,121	1	19	367,055
Totals	1,199,467			380,504
iClaim				
iClaim 3rd Party	350,519	1	15	87,630
iClaim Applicant after 3rd Party Completion	350,519	1	5	29,210
First Party iClaim—Domestic Applicant	2,283,301	1	15	570,825
First Party iClaim—Foreign Applicant	11,373	1	18	3,412
Medicare-only iClaim	797,709	1	10	132,952
Totals	3,793,421			824,029
iAppointment Burden Information				
iAppointment	17,621	1	10	2,937
Grand Total	7,103,513			1,576,027

4. Medical Source Statement of Ability To Do Work Related Activities (Physical and Mental)—20 CFR 404.1512–404.1513, 416.912–416.913, 404.1517, and 416.917—0960–0662. In some instances when a claimant appeals a denied disability claim, SSA may ask the claimant to have a consultative examination, at the agency's expense, if the claimant's medical sources cannot or will not give the agency sufficient evidence to determine whether the claimant is disabled. The medical providers who perform these consultative examinations provide a statement about the claimant's state of disability. Specifically, these medical source statements determine the work-related capabilities of these claimants. SSA collects the medical data on the HA–1151 and HA–1152 to assess the work-related physical and mental capabilities of claimants who appeal SSA's previous determination on their issue of disability. The respondents are medical sources who provide reports based either on existing medical evidence or on consultative examinations.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–1151	5,000	30	15	37,500

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–1152	5,000	30	15	37,500
Totals	10,000			75,000

5. Social Security's Public Credentialing and Authentication Process—20 CFR 401.45 and 402—0960–0789.

Background

Authentication is the foundation for secure, online transactions. Identity authentication is the process of determining, with confidence, that someone is who he or she claims to be during a remote, automated session. It comprises three distinct factors: something you know; something you have; and something you are. Single-factor authentication uses one of the factors, and multi-factor authentication uses two or more of the factors.

SSA's Public Credentialing and Authentication Process

SSA offers consistent authentication across SSA's secured online services. We allow our users to request and maintain only one User ID, consisting of a self-selected username and password, to access multiple Social Security electronic services. Designed in accordance with the OMB Memorandum M–04–04 and the National Institute of Standards and Technology (NIST) Special Publication 800–63, this process provides the means of authenticating users of our secured electronic services and streamlines access to those services.

SSA's public credentialing and authentication process:

- Issues a single User ID to anyone who wants to do business with the agency and meets the eligibility criteria;
- Partners with an external Identity Services Provider (ISP) to help us verify the identity of our online customers;
- Complies with relevant standards;
- Offers access to some of SSA's heaviest, but more sensitive, workloads online while providing a high level of confidence in the identity of the person requesting access to these services;
- Offers an in-person process for those who are uncomfortable with or unable to use the Internet process;
- Balances security with ease of use; and
- Provides a user-friendly way for the public to conduct extended business with us online instead of visiting local servicing offices or requesting information over the phone. Individuals have real-time access to their Social Security information in a safe and secure web environment.

Public Credentialing and Authentication Process Features

We collect and maintain the users' personally identifiable information (PII) in our Central Repository of Electronic Authentication Data Master File Privacy Act system of records, which we published in the **Federal Register** (75 FR 79065). The PII may include the users' name; address; date of birth; Social Security number (SSN); phone number; and other types of identity information [*e.g.,* address information of persons from the W–2 and Schedule Self Employed forms we receive electronically for our programmatic purposes as permitted by 26 U.S.C. 6103(l)(1)(A)]. We may also collect knowledge-based authentication data, which is information users establish with us or that we already maintain in our existing Privacy Act systems of records.

We retain the data necessary to administer and maintain our e-Authentication infrastructure. This includes management and profile information, such as blocked accounts; failed access data; effective date of passwords; and other data allowing us to evaluate the system's effectiveness. The data we maintain also may include archived transaction data and historical data.

We use the information from this collection to identity proof and authenticate our users online, and to allow them access to their personal information from our records. We also use this information to provide second factor authentication. We are committed to expanding and improving this process so we can grant access to additional online services in the future.

Offering online services is not only an important part of meeting SSA's goals, but is vital to good public service. In increasing numbers, the public expects to conduct complex business over the Internet. Ensuring SSA's online services are both secure and user friendly is our priority.

With the limited data we have, it is difficult for SSA to meet the OMB and NIST authentication guidelines for identity proofing the public. Therefore, we awarded a competitively bid contract to an ISP, Equifax, to help us verify the identity of our online customers. We use this ISP, in addition to our other authentication methods, to help us prove, or verify, the identity of our customers when they are completing online or electronic transactions with us.

Social Security's Authentication Strategy

We remain committed to enhancing our online services using authentication processes that balance usability and security. We will continue to research and develop new authentication tools while monitoring the emerging threats. The following are key components of our authentication strategy:

- Enrollment and Identity Verification—Individuals who meet the following eligibility requirements may enroll:
  - Must have a valid email address;
  - Must have a valid SSN;
  - Must have a domestic address of record (includes military addresses); and
  - Must be at least 18 years of age.

We collect identifying data and use SSA and ISP records to verify an individual's identity. Individuals have the option of obtaining an enhanced, stronger, User ID by providing certain financial information (*e.g.,* Medicare wages, self-employed earnings, or the last eight digits of a credit card number) for verification. We also ask individuals to answer out-of-wallet questions so we can further verify their identities. Individuals who are unable to complete the process online can present identification at a field office to obtain a User ID.

- Establishing the User Profile—The individual self-selects a username and password, both of which can be of variable length and alphanumeric. We provide a password strength indicator to help the individual select a strong password. We also ask the individual to choose challenge questions for use in restoring a lost or forgotten username or password.
- Provide a Second Factor—We ask the individual to provide a text message enabled cell phone number or an email

address. We consider the cell phone number or email address the second factor of authentication. We send a security code to the individual's selected second factor. We require the individual to confirm its receipt by entering the security code online. Subsequently, each time the individual attempts to sign in to his or her online account, we will also send a message with a one-time security code to the individual's selected second factor. The individual must enter the security code along with his or her username and password. The code is valid for only 10 minutes. If the individual does not enter the code within 10 minutes, the code expires, and the individual must request another code.

• Enhancing the User ID—If individuals opt to enhance or upgrade their User IDs, they must provide certain financial information for verification. We mail a one time-use upgrade code to the individual's verified residential address. When the individual receives the upgrade code in the mail, he or she can enter this code online to enhance the security of the account. With extra security, we continue to require the individuals to sing in using their username, password, and a one time security code we send to their second factor email address or cell phone number (whichever the users listed in their account).

• Sign in and Use—Our authentication process provides an individual with a User ID for access to our sensitive online Social Security services. Second factor authentication requires the individual to sign in with a username, password, and a one-time security code sent to the individual's selected second factor. SSA expanded its existing capabilities to require second factor authentication for every online sign in. We also allow for maintenance of the second factor options. An individual who forgets the password can reset it automatically without contacting SSA.

Social Security's Enrollment Process

The enrollment process is a one-time only activity. SSA requires the individuals to agree to the ''Terms of Service'' detailed on our Web site before we allow them to begin the enrollment process. The ''Terms of Service'' inform the individuals what we will and will not do with their personal information, and the privacy and security protections we provide on all data we collect. These terms also detail the consequences of misusing this service.

To verify the individual's identity, we ask the individual to give us minimal personal information, which may include:

- Name;
- SSN;
- Date of birth;
- Address—mailing and residential;
- Telephone number;
- Email address;
- Financial information;
- Cell phone number; and
- Selecting and answering password reset questions.

We send a subset of this information to the ISP, who then generates a series of out-of-wallet questions back to the individual. The individual must answer all or most of the questions correctly before continuing in the process. The exact questions generated are unique to each individual.

This collection of information, or a subset of it, is mandatory for respondents who want to do business with SSA via the Internet. We collect this information via the Internet, on SSA's public-facing Web site. We also offer an in-person identification verification process for individuals who cannot, or are not willing, to register online. For this process, the individual must go to a local SSA field office and provide identifying information. We do not ask for financial information with the in-person process.

We only collect the identity verification information one time, when the individual registers for a credential. We ask for the User ID (username and password) every time an individual signs in to our automated services. If individuals opt for the enhanced or upgraded account, they also receive a text message on their cell phones (this serves as the second factor for authentication) each time they sign in. The respondents are individuals who choose to use the Internet or Automated Telephone Response System to conduct business with SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Internet Requestors	52,698,441	1	8	7,026,459
In-Person (Intranet) Requestors	3,407,319	1	8	454,309
Totals	56,105,760			7,480,768

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 12, 2017. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Marriage Certification—20 CFR 404.725—0960–0009. Sections 202(b) and 202(c) of the Act stipulate that every spouse of an individual entitled to Old Age, Survivors, and Disability Insurance (OASDI) benefits is entitled to a spouse benefit if the wife or husband, in addition to meeting the entitlement requirements, meets the relationship criteria in Section 216(h)(1)(A) and (B) of the Act. SSA uses Form SSA–3 to determine if a spouse claimant has the necessary relationship to the Social Security number holder (*i.e.,* the worker) to qualify for the worker's OASDI benefits. The respondents are applicants for spouse's OASDI benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3	180,000	1	5	15,000

2. Representative Payee Report-Adult, Representative Payee Report-Child, Representative Payee Report-Organizational Representative Payees—20 CFR 404.635, 404.2035, 404.2065, and 416.665—0960–0068. When SSA determines it is not in an OASDI or SSI recipient's best interest to receive Social Security payments directly, the agency will designate a representative payee for the recipient. The representative payee can be: (1) A family member; (2) a non-family member who is a private citizen and is acquainted with the beneficiary; (3) an organization; (4) a state or local government agency; or (5) a business. In the capacity of representative payee, the person or organization receives the SSA recipient's payments directly and manages these payments. As part of its stewardship mandate, SSA must ensure the representative payees are properly using the payments they receive for the recipients they represent. The agency annually collects the information necessary to make this assessment using the SSA–623, Representative Payee Report-Adult; SSA–6230, Representative Payee Report-Child; SSA–6234, Representative Payee Report-Organizational Representative Payees; and through the electronic internet application Internet Representative Payee Accounting (iRPA). The respondents are representative payees of OASDI and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–623	2,812,662	1	15	703,166
SSA–6230	2,968,986	1	15	742,247
SSA–6234	719,684	1	15	179,921
iRPA*	650,195	1	15	162,549
Totals	7,151,527			1,787,883

*One Internet platform encompasses all three paper forms.

3. Annual Earnings Test Direct Mail Follow-Up Program Notices—20 CFR 404.452–404.455—0960–0369. SSA developed the Annual Earnings Test Direct Mail Follow-up Program to improve beneficiary reporting on work and earnings during the year and earnings information at the end of the year. SSA may reduce benefits payable under the Act when an individual has wages or self-employment income exceeding the annual exempt amount. SSA identifies beneficiaries likely to receive more than the annual exempt amount, and requests more frequent estimates of earnings from them. When applicable, SSA also requests a future year estimate to reduce overpayments due to earnings. SSA sends letters (SSA–L9778, SSA–L9779, SSA–L9781, SSA–L9784, SSA–L9785, and SSA–L9790) to beneficiaries requesting earnings information the month prior to their attainment of full retirement age. We send each beneficiary a tailored letter that includes relevant earnings data from SSA records. The Annual Earnings Test Direct Mail Follow-up Program helps to ensure Social Security payments are correct, and enables us to prevent earnings-related overpayments, and avoid erroneous withholding. The respondents are working Social Security beneficiaries with earnings over the exempt amount.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L9778	42,630	1	10	7,105
SSA–L9779	158,865	1	10	26,478
SSA–L9781	472,437	1	10	78,740
SSA–L9784	1,270	1	10	212
SSA–L9785	15,870	1	10	2,645
SSA–L9790	45,000	1	10	7,500
Totals	736,072			122,680

4. Letter to Landlord Requesting Rental Information—20 CFR 416.1130(b)—0960–0454. SSA uses Form SSA–L5061 to obtain rental subsidy information, which enables SSA to determine and verify an income value for such subsidies. SSA uses this income value as part of determining eligibility for SSI and the correct amount of SSI payable to the claimant. SSA bases an individual's eligibility for SSI payments, in part, on the amount of countable income the individual receives. Income includes in-kind support and maintenance in the form of room or rent, such as a subsidized rental arrangement. SSA requires claimants to assist in obtaining this information to prevent a delay or overpayment with their SSI payments. We collect this information only if the SSI applicant or recipient is the parent or child of the landlord (respondent). For most respondents, we collect this information once per year or less, via telephone or face-to-face personal interview. The claims representative records the information in our Modernized SSI Claims System (MSSICS), and we require verbal attestation in lieu of a wet signature. However, if the claims representative is unable to contact the respondent via the telephone or face-to-face, we print and mail a paper form to the respondent for completion. The respondent completes, signs, and returns the form to the claims representative. Upon receipt, the claims representative documents the information in MSSICS or, for non-MSSICS cases, faxes the form into the appropriate electronic folder and shreds

the paper form. The respondents are landlords related to the SSI beneficiaries as a parent or child.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L5061	72,000	1	10	12,000

5. Request for Social Security Earnings Information—20 CFR 401.100 and 404.810—0960–0525. The Act permits wage earners, or their authorized representatives, to request Social Security earnings information from SSA using Form SSA–7050–F4. SSA uses the information the respondent provides on Form SSA–7050–F4 to verify the wage earner has: (1) Earnings; (2) the right to access the correct Social Security Record; and (3) the right to request the earnings statement. If we verify all three items, SSA produces an Itemized Statement of Earnings (Form SSA–1826) and sends it to the requestor. Respondents are wage earners and their authorized representatives who are requesting Itemized Statement of Earnings records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7050–F4	66,800	1	11	12,247

Cost Burden:

Type of respondent	Annual cost
Non-Certified Respondent	$2,211,105
Certified Respondent	1,601,656
Total	$3,812,761

6. Request for Evidence from Doctor and Request for Evidence from Hospital—20 CFR 404 Subpart P and 20 CFR 416 Subpart I—0960–0722. Sections 223(d)(5) and 1614(a)(3)(H)(i) of the Act require claimants to furnish medical evidence of their disability when filing a disability claim. SSA uses Forms HA–66 and HA–67 to request evidence from medical sources, which claimants identify as having information relative to their impairments, or ability to do work-related activities. In addition to accepting manual paper responses, SSA sends a barcode with the HA–66 and HA–67, allowing respondents to fax the information directly into the electronic claims folder rather than submitting it manually. SSA uses the information to determine eligibility for benefits, and to pay medical sources for furnishing the information. The respondents are medical sources, doctors, and hospitals that evaluate the claimants.

This is a correction notice: When we published the first **Federal Register** Notice on February 28, 2017 at 82 FR 12159, it did not include the accurate number of responses. We are correcting this by publishing the number of responses in a separate column in the chart below.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–66—Paper Version	3,060	22	67,320	15	16,830
HA–66—Electronic Version	8,940	22	196,680	15	49,170
HA–67—Paper Version	3,060	22	67,320	15	16,830
HA–67—Electronic Version	8,940	22	196,680	15	49,170
Totals	24,000	.....	528,000	.....	132,000

Dated: May 9, 2017.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2017–09687 Filed 5–11–17; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2016–0052]

Privacy Act of 1974; Matching Program (SSA/Office of Child Support Enforcement (OCSE)—Match Number 1074

AGENCY: Social Security Administration (SSA)

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new/modified of an existing computer matching program that we are currently conducting with OCSE.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice. The matching program will be effective on June 12, 2017 and will expire on June 11, 2017.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, or email at *Mary.Ann.Zimmerman@ssa.gov.* All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

PARTICIPATING AGENCIES:

SSA and OCSE

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The legal authority for disclosures under this agreement are the Social Security Act (Act) and the Privacy Act of 1974, as amended. Section 453(j)(4) of the Act provides that OCSE shall provide the Commissioner of Social Security with all the information in the NDNH. 42 U.S.C. 653(j)(4). SSA has authority to use data to determine entitlement and eligibility for programs it administers pursuant to 453(J)(4), 1631(e)(1)(B) and (f), and 1148(d)(1) of the Act. 42 U.S.C. 653(j)(4), 1320b–19(d)(1), and 1383(e)(1)(B) and (F). Disclosures under this agreement shall be made in accordance with 5 U.S.C. 552a(b)(3), and in compliance with the matching procedures in 5 U.S.C. 552a(o), (p), and (r).

The Commissioner of Social Security is required to verify eligibility of a recipient or applicant for SSI using independent or collateral sources. SSI benefits may not be determined solely based on declarations by the applicant concerning eligibility factors or other relevant facts. Information is also obtained, as necessary, in order to assure that SSI benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. Section 1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)).

Subsection 1631(f) of the Act (42 U.S.C. 1383(f)) provides that ''the head of any federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying information with respect thereto.''

Section 1148(d)(1) of the Act (42 U.S.C. 1320b–19(d)(1)) requires SSA to verify earnings of beneficiaries/recipients to ensure accurate payments to employer network providers under the Ticket-to-Work program.

PURPOSE(S):

The purpose of this matching program is to govern the following information exchange operations between OCSE and us from the National Directory of New Hires (NDNH): online query access for Supplemental Security Income (SSI), Disability Insurance (DI), and Ticket-to-Work and Self-Sufficiency (Ticket) programs, and SSI Quarterly Wage batch match. This agreement also governs the use, treatment, and safeguarding of the information exchanged. The agreement assists us (1) in establishing or verifying eligibility or payment amounts, or both under the SSI program; (2) in establishing or verifying eligibility or continuing entitlement under the DI program; (3) in administering the Ticket programs. These activities include overpayment avoidance and recovery for all three programs.

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in this matching program are those individuals that are receiving benefits under the SSI, DI, and Ticket programs and individuals who are new hires, earning quarterly wages, or receiving unemployment insurance.

CATEGORIES OF RECORDS:

Our Systems of Records (SOR) are the Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), SSA/OASSIS, 60–0103 published January 11, 2006 at 71 FR 1830, and amended at 72 FR 69723 (December 10, 2007); and the Completed Determination Record-Continuing Disability Determination file (CDR–CDD), SSA/OD, 60–0050, published January 11, 2006 at 71 FR 1813, and amended at 72 FR 69723 (December 10, 2007).

OCSE will match our information in the SSR and CDR–CDD against the new hire, quarterly wage, and unemployment insurance information furnished by state and federal agencies maintained in its SOR ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, established by publication in the FR on April 2, 2015 at 80 FR 17906. Routine use (9) of the SOR authorizes disclosure of NDNH information to SSA, 80 FR 17906, 17907 (April 2, 2015).

We will access the OCSE web service when making online queries for new hire, quarterly wage, and unemployment insurance information in the NDNH. To comply with limitations on disclosure and to prohibit browsing, our access is restricted by anti-browsing technology (permission modules) to only those Social Security numbers (SSN) that have a direct business relationship with SSI, DI, or Ticket programs (that is, the record must have a valid SSI, DI, or Ticket payment or application issue). If no business relationship exists with us, OCSE denies access to NDNH and the user is unable to proceed. If a business relationship exists with us, we can access the NDNH via the OCSE web service to display

SSN-specific new hire, quarterly wage, or unemployment insurance information in the NDNH. The Master File Query Menu (MFQM) or eView extracts information from our SSR (for SSI recipients) or CDR–CDD (for ticket holders and disability beneficiaries) to facilitate query access.

Under the Quarterly Batch Match (SSI). Our finder file is matched against the quarterly wage and unemployment insurance information in OCSE's NDNH.

We will provide electronically to OCSE the following data elements in the finder file: Individual's SSN and Name.

OCSE will provide electronically to us the following data elements from the NDNH in the quarterly wage file: Quarterly wage record identifier; transmitter agency code; transmitter state code; and state or agency name; employee information: Name (first, middle, last), SSN, verification request code, processed date, non-verifiable indicator, wage amount, and reporting period; and information about employers of individuals in the quarterly wage file: Name, employer identification number, and address(es).

OCSE will provide electronically to us the following data elements from the NDNH in the unemployment insurance file: Unemployment insurance record identifier; processed date; SSN; verification request code; name (first, middle, last); address; unemployment insurance benefit amount; reporting period; transmitter agency code; transmitter state code; and state or agency name.

Under the Online Query Access (SSI, DI, and Ticket programs), we will access OCSE's web service when making online requests for NDNH records. We will provide OCSE the individual's SSN to initiate a query in SSA's Permission Module. Individual's SSN. OCSE will provide us online query access to the following data elements on quarterly wage screen: Quarterly wage record identifier; date report processed; name/SSN verified; employee information: SSN, name (first, middle, last), wage amount, and reporting period; employer information: Name, employer identification number, employer FIPS code (if present), and address(es).

OCSE will provide us online query access to the following data elements on the new hire screen: New hire record identifier; name/SSN verified; date report processed; employee information: SSN, name (first, middle, last), and date of hire; employer information: Name, employer identification number, employer FIPS code (if present), and address(es).

OCSE will provide us online query access to the following data elements on the unemployment insurance screen: Unemployment insurance record identifier; name/SSN verified; SSN; name (first, middle, last); address; unemployment insurance benefit amount; reporting period; payer state; and date report processed.

SYSTEM(S) OF RECORDS:

OCSE and SSA published notice of the relevant SORs in the FR SSA's SORs are the Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), SSA/OASSIS, 60–0103 published January 11, 2006 at 71 FR 1830, and amended at 72 FR 69723 (December 10, 2007); and the Completed Determination Record-Continuing Disability Determination file (CDR–CDD), SSA/OD, 60–0050, published January 11, 2006 at 71 FR 1813, and amended at 72 FR 69723 (December 10, 2007).

OCSE will match SSA information in the SSR and CDR–CDD against the new hire, quarterly wage, and unemployment insurance information furnished by state and federal agencies maintained in its SOR ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, established by publication in the FR on April 2, 2015 at 80 FR 17906. The disclosure of NDNH information by OCSE to SSA constitutes a ''routine use,'' as defined by the Privacy Act. 5 U.S.C. 552a(b)(3). Routine use (9) of the SOR authorizes disclosure of NDNH information to SSA, 80 FR 17906, 17907 (April 2, 2015).

SSA will access the OCSE web service when making online queries for new hire, quarterly wage, and unemployment insurance information in the NDNH. To comply with limitations on disclosure and to prohibit browsing, SSA access is restricted by anti-browsing technology (permission modules) to only those Social Security numbers (SSN) that have a direct business relationship with SSI, DI, or Ticket programs (that is, the record must have a valid SSI, DI, or Ticket payment or application issue). If no business relationship exists with SSA, OCSE denies access to NDNH and the user is unable to proceed. If a business relationship exists with SSA, SSA can access the NDNH via the OCSE web service to display SSN-specific new hire, quarterly wage, or unemployment insurance information in the NDNH. The MFQM or eView extracts information from SSA's SSR (for SSI recipients) or CDR–CDD (for ticket holders and disability beneficiaries) to facilitate query access.

[FR Doc. 2017–09603 Filed 5–11–17; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36109]

Grupo México, S.A.B. de C.V. and GMéxico Transportes, S.A. de C.V.—Control Exemption—Florida East Coast Holdings Corp.

GMéxico Transportes, S.A. de C.V. (GMéxico Transportes), a non-carrier holding company, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to control Florida East Coast Railway, L.L.C. (FECR), a Class II rail carrier operating in the state of Florida, and Texas Pacifico Transportation, Ltd. (Pacifico), a Class III rail carrier operating in the state of Texas. In addition, GMéxico Transportes filed an amendment to its verified notice of exemption to identify and encompass its parent company, Grupo México, S.A.B. de C.V. (Grupo México), also a non-carrier holding company,[1] and to identify Copper Basin Railway, Inc. (Copper Basin), a Class III rail carrier operating in the state of Arizona, as an additional carrier which Grupo México controls.[2] Control of these three rail carriers by Grupo México and GMéxico Transportes will be effected upon the merger of GMXT Florida Merger Sub, Inc. (GMXT Merger Sub), a non-carrier subsidiary of GMéxico Transportes, with and into Florida East Coast Holdings Corp. (FEC Holdings), a non-carrier currently controlling FECR.[3]

The transaction may be consummated on or after May 28, 2017, the effective date of the exemption.[4]

[1] GMéxico Transportes filed the verified notice of exemption and the amendment to that notice identifying itself as the entity obtaining Board authority in this proceeding. However, because Grupo México is the ultimate parent company of GMéxico Transportes, and because Grupo México is the entity in ultimate control of both Pacifico and Copper Basin, this proceeding has been recaptioned to include Grupo México.

[2] It appears that Grupo México did not obtain Board authority to have common control of more than one rail carrier when it acquired Copper Basin. If that is the case, and if such authority was required, the Board expects Grupo México to promptly submit an appropriate filing for authorization of that common control.

[3] On April 10, 2017, GMéxico Transportes and FEC Holdings jointly filed a motion for protective order under 49 CFR 1104.14(b), which will be addressed in a separate decision.

[4] Because GMéxico Transportes amended its verified notice of exemption on April 28, 2017, that date is the official filing date and the basis for all subsequent dates.

Grupo México and GMéxico Transportes represent that: (1) The carriers that are the subject of this notice do not connect with each other; (2) the control transaction is not a part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves one Class II rail carrier and two Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by May 19, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36109, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell, 1001 Connecticut Avenue, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: May 9, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2017–09657 Filed 5–11–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 1 Environmental Impact Statement (EIS) for the Sonoran Corridor Between Interstate 10 (I–10) and Interstate 19 (I–19) South of Tucson International Airport in Pima County, Arizona

AGENCY: Federal Highway Administration (FHWA), Arizona Department of Transportation (ADOT), DOT.

ACTION: Notice of intent to prepare a Tier 1 Environmental Impact Statement (EIS).

SUMMARY: The FHWA, as the Federal Lead Agency, and the ADOT, as the Local Project Sponsor, are issuing this notice to advise the public of our intention to prepare a Tier 1 EIS for the Sonoran Corridor between I–19 and I–10 south of the Tucson International Airport in Pima County, Arizona. The Tier 1 EIS will assess the potential social, economic, and natural environmental impacts of a transportation facility in the designated Sonoran Corridor across a reasonable range of corridor alternatives, including a ''No Build'' alternative. The Tier 1 EIS will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA), and provisions of Fixing America's Surface Transportation Act (FAST Act).

FOR FURTHER INFORMATION CONTACT: For FHWA, contact Mr. Ammon Heier, Area Engineer, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012, telephone at 602–382–8983, or via email at *Ammon.Heier@dot.gov.* Regular office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. For ADOT, contact Mr. Carlos Lopez, Sonoran Corridor Project Manager, Arizona Department of Transportation, 205 South 17th Avenue, Mail Drop 605E, Phoenix, AZ 85007, telephone at 602–712–4786, or via email at *CLopez@azdot.gov.* Regular office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Project information can be obtained from the project Web site at: *https://www.azdot.gov/SonoranCorridor.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to: (1) Alert interested parties to FHWA's plan to prepare the Tier 1 EIS; (2) provide information on the nature of the proposed action; (3) solicit public and agency input regarding the scope of the Tier 1 EIS, including the purpose and need, alternatives to be considered, and impacts to be evaluated; and (4) announce that public and agency scoping meetings will be conducted. The FHWA intends to issue a single Final Tier 1 EIS and Record of Decision (ROD) document pursuant to the FAST Act Section 1311 requirements, unless FHWA determines statutory criteria or practicability considerations preclude issuance of a combined document.

The Tier 1 EIS will ensure, to the fullest extent possible, all environmental investigations, reviews, and consultations are coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document. The Sonoran Corridor is a critical transportation facility that could help diversify, support, and connect the economy of Southern Arizona, and the entire State of Arizona. The intent of the Sonoran Corridor is to help alleviate traffic and improve the movement of people, goods, and services by reducing travel distances, and eliminate the need for vehicles to travel through the existing I–10 and I–19 traffic interchange near downtown Tucson. On December 4, 2015, the President signed into law the FAST Act, which is a 5-year legislation that provides long term funding certainty for planning efforts and investments that will help improve the Nation's surface transportation infrastructure. The FAST Act formally designates the Sonoran Corridor as a high-priority corridor, thus reinforcing the need to conduct a study for a future transportation facility between I–10 and I–19 south of Tucson International Airport.

The FHWA and ADOT will undertake a scoping process for the Sonoran Corridor that will allow the public and interested agencies to comment on the scope of the environmental review process. The FHWA and ADOT will invite all interested individuals, organizations, public agencies, and Native American Tribes to comment on the scope of the Tier 1, including the purpose and need, alternatives to be studied, impacts to be evaluated, and evaluation methods to be used. The formal scoping period is anticipated to extend from May 12, 2017 to July 15, 2017. Two public scoping meetings and one agency scoping meeting for Federal, State, regional and local resource and regulatory agencies will be held during the formal scoping period. In addition, cooperating and participating agency invitation letters will be sent to agencies that have jurisdiction or may have an interest in the Sonoran Corridor.

The buildings used for the meetings are accessible to persons with disabilities. Any person who requires special assistance, such as a language interpreter, should contact the Sonoran Corridor Tier 1 EIS Study Team at telephone 855–712–8530 or via email at *Sonorancorridor@azdot.gov* at least 48 hours before the meeting.

Written comments on the scope of the Tier 1 EIS should be mailed to: Sonoran Corridor Tier 1 EIS Study Team, c/o ADOT Communications, 1655 West

Jackson Street, Mail Drop 126F, Phoenix, AZ 85007; sent via email to *Sonorancorridor@azdot.gov;* or submitted on the study's Web site at *https://www.azdot.gov/SonoranCorridor.*

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use dissemination, and disposition of information. Accordingly, unless a specific request for a complete hardcopy of the NEPA document is received before it is printed, the FHWA and ADOT will distribute only electronic versions of the NEPA document. A complete copy of the environmental document will be available for review at locations throughout the study area. An electronic copy of the complete environmental document will be available on the study's Web site at *https://www.azdot.gov/SonoranCorridor.*

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: May 4, 2017.

Karla S. Petty,

Arizona Division Administrator, Federal Highway Administration.

[FR Doc. 2017–09452 Filed 5–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0138; Notice 1]

Jaguar Land Rover North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Jaguar Land Rover North America, LLC (JLR)on behalf of Jaguar Land Rover Limited, has determined that certain model year (MY) 2016–2017 Land Rover Range Rover and Range Rover Sport motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* and FMVSS No. 209, *Seat Belt Assemblies.* JLR filed a noncompliance report dated December 2, 2016. JLR also petitioned NHTSA on December 23, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is June 12, 2017.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Jaguar Land Rover North America, LLC (JLR), has determined that certain model year (MY) 2016–2017 Land Rover Range Rover and Range Rover Sport motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* and FMVSS No. 209, *Seat Belt Assemblies.* JLR filed a noncompliance report dated December 2, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* JLR also petitioned NHTSA on December 23, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of JLR's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 16,502 MY 2016–2017 Land Rover Range Rover and MY 2016–2017 Land Rover Range Rover Sport motor vehicles, manufactured between May 3, 2016, and October 14, 2016, are potentially involved.

III. Noncompliance: JLR explains that the noncompliance involves the Emergency Locking Retractor (ELR) in the safety belt assembly of the vehicle's front left seat. These ELR's are equipped with a vehicle-sensitive locking mechanism and a webbing-sensitive locking mechanism. The noncompliance specifically involves the vehicle-sensitive locking mechanism, which does not lock as designed when subjected to the requirements of paragraph

IV. Rule Text: Paragraph S4.3 of FMVSS No. 209 states in pertinent part:

S4.3 *Requirements for hardware . . .*

(j) *Emergency-locking retractor . . .*

(2) *For seat belt assemblies manufactured on or after February 22, 2007 and for manufacturers opting for early compliance.* An emergency-locking retractor of a Type 1 or Type 2 seat belt assembly, when tested in accordance with the procedures specified in paragraph S5.2(j)(2) . . .

(ii) Shall lock before the webbing payout exceeds the maximum limit of 25 mm when the retractor is subjected to an acceleration of 0.7 g under the applicable test conditions of S5.2(j)(2)(iii)(A) or (B). The retractor is determined to be locked when the webbing belt load tension is at least 35 N.

Paragraph S7.1.1.3 of FMVSS No. 208 states in pertinent part:

S7.1.1.3 A Type 1 lap belt or the lap belt portion of any Type 2 seat belt assembly installed at any forward-facing outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less to comply with a requirement of this standard, except walk-in van-type vehicles and school buses, and except in rear seating positions in law enforcement vehicles, shall meet the requirements of S7.1 by means of an emergency locking retractor that conforms to stand No. 209 (49 CFR 571.209) . . .

V. Summary of JLR's Petition: JLR described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, JLR submitted the following reasoning:

(a) *ELR Is Voluntarily Equipped with a Webbing Sensitive Locking Mechanism:* The driver's ELR safety belt assembly also contains a voluntary webbing-sensitive locking mechanism which provides crash restraint performance comparable to the performance provided by an FMVSS No. 209 compliant vehicle sensitive mechanism. A description of the tests that were performed and the results that were obtained which support this petition are contained in the petition.

The webbing sensitive locking mechanism is designed to lock at approximately 1.4–2.0g. The webbing-sensitive locking mechanism was designed to meet the requirements of other non-U.S. markets.

(b) *Testing and Analyses:* Tests and analyses were conducted to determine the effect of a non-compliant vehicle-sensitive locking mechanism ELR on safety belt restraint (retractor locking) performance and any commensurate increase in injury risk in a crash.

Even though the ELRs in affected vehicles contain a vehicle-sensitive locking mechanism which slightly exceeds the FMVSS No. 209 Section 4.3(j)(2)(ii) requirement, for purposes of evaluation, and to demonstrate a ''worst-case scenario'', testing was conducted without reliance on vehicle-sensitive ELR operation.

1. *Sled (Crash) Tests To Assess Safety Belt Restraint (Retractor Locking) Performance:* Sled (crash) tests were conducted with an ELR containing an FMVSS No. 209 compliant vehicle-sensitive locking mechanism and an ELR in which the vehicle-sensitive locking mechanism was disabled to simulate a ''worst-case scenario'', but contained a webbing-sensitive locking mechanism.

The belt geometry is representative of the Land Rover Range Rover and Range Rover Sport Installation.

The testing focused upon low severity crashes, because as NHTSA had discussed in their ruling on the GM petition,[1] ''. . . a webbing-sensitive ELR mechanism will lock up more quickly in a severe frontal crash than in a low-to-moderate severity frontal crash.'' A low-severity crash represents a ''worst-case scenario'' for an ELR equipped with a non-compliant vehicle-sensitive locking mechanism. In addition, the testing was conducted using a Hybrid III 5th% dummy in order to provide a slow increase in belt loads.

Three acceleration pulses with a low increase in deceleration and a low deceleration level were selected from all pulses pertaining to the affected vehicles. The selected pulses have an impact velocity of 15 km/h, and 40 km/h respectively. The 15 km/h and 32 km/h pulses represent a full frontal crash, while the 40 km/h pulse represents an Offset Deformable Barrier (ODB) crash. The 15 km/h pulse is a ''no fire'' pulse to simulate a crash without safety belt pre-tensioning.

A total of six tests were conducted, with two tests being conducted at each pulse level. Webbing payout and dummy chest forward displacement were measured.

The results indicate that there is no significant difference in restraint performance (webbing payout, dummy chest forward displacement) between an ELR equipped with an FMVSS No. 209 compliant vehicle-sensitive locking mechanism and one that is not equipped with such a mechanism. The webbing-sensitive locking mechanism within the ELR provides comparable performance to that of an FMVSS No. 209 compliant ELR containing a vehicle sensitive locking mechanism.

Therefore, in a crash, the webbing-sensitive locking mechanism provides equivalent protection for the driver to that which would be provided by an FMVSS No. 209-compliant vehicle sensitive locking mechanism. It should be emphasized that the vehicle-sensitive locking mechanism contained in the ELR of the affected vehicles slightly exceeds the FMVSS No. 209 Section 4.3(j)(2)(ii) requirement, whereas testing was conducted with a disabled vehicle-sensitive locking mechanism to simulate a ''worst-case scenario''.

It should also be noted that any performance differences, such as a slight decrease in dummy chest forward displacement from an ELR without a vehicle-sensitive locking mechanism, are within the normal test to test variation and are attributed to test tolerances.

2. *Body-In White (BIW) Sled (Crash) Tests To Assess Injury Risk:* Body-In-White (BIW) sled (crash) tests were conducted with an ELR containing an FMVSS No. 209 Section 4.3(i)2(ii)-compliant vehicle-sensitive locking mechanism. Further testing was conducted without reliance on vehicle-sensitive ELR operation for comparative performance purposes (to simulate a ''worst-case scenario''), but contained a webbing-sensitive locking mechanism.

Tests were conducted with a Hybrid III 50th% dummy and a 56 km/h pulse representing a full-frontal FMVSS No. 208 requirement. The pulse was selected from an actual pulse of one of the affected vehicles.

3. *Sled (BIW Crash) Test Pulse (L405—Range Rover):* The dummy was positioned to simulate pre-crash braking for both test conditions, *i.e.,* the test using the compliant vehicle-sensitive locking mechanism ELR, and the test using the non-compliant vehicle-sensitive locking mechanism ELR. Pre-crash braking positioning was included to simulate critical real-world crash conditions, as pre-crash braking occurs in a significant percentage of crashes. Pre-crash braking would position the dummy (in both tests) closer to the steering wheel prior to impact. Additionally, pre-crash braking would assess any effect of additional forward movement resulting from an ELR in which the vehicle-sensitive locking mechanism was disabled (to simulate a ''worst-case scenario'').

For the test with the FMVSS No. 209-compliant vehicle-sensitive ELR, the dummy's H-point was 40mm more forward, and the dummy's Chest CG was 70mm more forward, than it otherwise would be in a test which did not simulate pre-crash braking. For the test with the FMVSS No. 209 non-compliant vehicle-sensitive ELR, the dummy's H-point was 60mm more forward, and the dummy's Chest CG was 90mm more forward than it otherwise would be in a test which did not simulate pre-crash braking. Therefore, for the dummy in which the non-compliant vehicle-sensitive ELR was utilized, it was positioned approximately 20mm more forward as compared to the dummy in the test in which the compliant vehicle-sensitive ELR was utilized.

The value of 20mm was obtained from conducting simulations representing pre-crash braking involving a deceleration over 1.5s peaking at approximately 1.0g for 1.0sec duration. Simulations were conducted because

[1] See 69 FR 1987@1900.

the Hybrid III dummy does not have adequate biofidelity in low-severity acceleration conditions such as pre-crash braking. The simulations utilized the Active THUMS model which has been well-correlated to actual driving/braking tests involving human volunteers. The additional forward movement of 20mm for the dummy in which the non-functioning vehicle-sensitive ELR was utilized was consistent across all dummy body regions (*i.e.,* head, chest, and pelvis).

The restraint system was equipped with a dual-stage driver airbag and safety belt pre-tensioners.

The results indicated that while there were only minor differences in recorded values between the two tests, the calculated injury values were well within the Injury Assessment Reference Values IARVs for each test outcome for both an ELR equipped with an FMVSS No. 209-compliant vehicle-sensitive locking mechanism and an ELR equipped with a non-compliant vehicle-sensitive locking mechanism.

(c) *Rollover Tests To Assess Safety Belt Restraint (Retractor Locking) Performance:*

1. Quasi-static Rollover Tests—FMVSS No. 209 Paragraph 4.3(j)(2)(i)(D) requires that the retractor lock at an angular rotation greater than 45-degrees. When tested, JLR has evidence of a part which did not perform to this standard.

Rollover tests were conducted with an ELR containing an FMVSS No. 209-compliant vehicle-sensitive locking mechanism and an ELR in which the vehicle-sensitive locking mechanism was disabled (to simulate a ''worst-case scenario'').

To simulate a rollover condition, quasi-static testing was conducted with an FMVSS No. 301 test device with a World-SID dummy being placed in the driver's seat of the vehicle mounted on the test device. Testing was conducted with an angular rotation range of ±50 degrees around the vehicle's longitudinal axis according to SAE 760. An angular range of ±50 degrees was used based on analysis of the affected vehicles during different vehicle level roll-over events and two key observations: (1) The time at which the seat belt retractors were subject to >1g lateral acceleration (an acceleration at which the affected ELRs had typically locked via the CS sensor, particularly with additional tilt angle applied) and, (2) the timing of the triggering of belt pretensioners in such a roll-over event, leading to locking of the seat belt ELR via the WS sensor (assuming the CS sensor had not locked earlier in the event). Test video of the D-loop (upper attachment point) and any dummy head movement was recorded.

For the tests in which the vehicle was rotated to the right, approximately 5mm additional webbing pay-out at the upper seat belt anchorage was observed between the vehicle-sensitive compliant and non-compliant ELRs up to a roll angle of 50 degrees. A difference in dummy head movement of approximately 10mm (in the lateral (y-direction)) was observed for the tests conducted with the vehicle-sensitive non-compliant ELR.

For the tests in which the vehicle was rotated to the left, the video did not depict any difference in dummy head movement between the vehicle-sensitive compliant and non-compliant ELRs. Also, no belt payout was visible at the D-loop.

2. *Dynamic Rollover Tests:* In addition to the quasi-static rollover tests, available data from actual dynamic rollover tests of the affected vehicles was analyzed to understand the dynamics in such scenarios and the effect of the vehicle-sensitive locking mechanism in the ELR.

The dynamic rollover tests were based upon real-world rollover conditions. An initial acceleration must occur to induce a rollover and tests were selected based on the minimum dynamic scenarios that would result in rollover. The lateral deceleration of the seat belt retractors in the rollover events was analyzed to determine the expected ELR vehicle-sensitive sensor locking time based on the evidence that a non-compliant ELR would lock by a lateral acceleration of approximately 1.0g and that the tilt lock function would lock at <0.7g with an additional tilt lock angle of 18 degrees. As the rollover sensing system fitted to the affected vehicles is configured to trigger the seat belt retractor pretensioners, the rollover sensor trigger times were also established for the rollover scenarios analyzed to determine the point at which the seat belt retractor pretensioner would activate and thereby achieve ELR belt locking.

From tests conducted with vehicle-sensitive locking mechanism non-compliant ELRs, the locking mechanism locks at approximately 1.0g of lateral acceleration. Additional testing on the same non-compliant ELRs has confirmed that the vehicle-sensitive locking of such an ELR would lock below an applied acceleration of 0.7g in all directions when tilted to an angle of up to 18° around the vehicle's longitudinal axis. Therefore, the results of the dynamic rollover tests indicate that the impact-inducing rollovers result in lateral decelerations in which the ELR will lock before a rotation of 18 degrees is reached. Further analysis of rollover sensor trigger times has demonstrated that the pretensioners would trigger before a rollover angle of 45 degrees.

This analysis confirms that locking will occur before a rotation angle of 45 degrees is reached, as required by FMVSS 209.

3. *Cork-Screw Rollover Simulation Analysis:* For the ''cork-screw'' rollover event additional analysis of the occupant kinematics was made to establish whether a non-compliant vehicle-sensitive locking mechanism of the ELR would have affected any forward motion of an occupant prior to ELR lock as previously determined.

An LS-Dyna computer simulation was made to replicate the ''cork-screw'' rollover event previously analyzed such that the occupant positioning could be determined without the influence of a locking seat belt ELR. To simulate a ''worst case scenario'' locking of the seat belt ELR was completely removed from the CAE model. The analysis was made on the ''far side'' occupant (*i.e.* the occupant sat on the opposite side of the vehicle from that which impacts the test ramp) as any lateral motion of this occupant is assumed to be inboard, away from the seat belt upper anchorage. The model was set up with a normally extracting/retracting seat belt to measure any webbing pay-out due to dummy kinematics prior to seat belt ELR lock.

Like the physical test, the simulation showed a small level of initial occupant forward head motion on initial vehicle-to-ramp contact and the occupant returned to a normal seating position prior to the vehicle leaving the ramp or the seat belt ELR locking during this dynamic event as previously determined. No webbing payout of the seat belt was observed in the simulation, leading to the conclusion that a seat belt with non-compliant vehicle-sensitive locking mechanism would not affect the occupant kinematics in such a rollover scenario.

(d) *Summary of Test Results:* The FMVSS 209 Section 4.3(j)(2)(i) & (ii) non-compliant vehicle-sensitive locking mechanism within the ELRs of affected vehicles shows no significant performance difference when compared to a compliant vehicle-sensitive locking mechanism. This finding is obtained from conducting a number of laboratory tests representing FMVSS 209 and 208 requirements, as well as other real-world crash conditions. The tests represent a variety of conditions such as crashes with, and without, pre-crash braking, and also other conditions, such as rollovers.

Notably, although all tests were conducted without reliance on a functioning ELR vehicle sensitive locking mechanism, affected vehicles do contain a functionally operable vehicle-sensitive locking mechanism which may slightly exceed the FMVSS 209 Paragraph 4.3(j)(2)(i) & (ii) requirements. Therefore, as installed in vehicles, the seat belt would likely perform better than the non-functioning units utilized for testing and analysis that form the basis for this petition.

(e) *Owner Contacts to Jaguar Land Rover Customer Relations:* Jaguar Land Rover Customer Relations has not received any contacts from vehicle owners regarding this issue.

(f) *Accidents/Injuries:* Jaguar Land Rover is not aware of any accidents or injuries that have occurred as a result of this issue.

(g) *Prior NHTSA Rulings re Manufacturer Petitions:* NHTSA has previously granted a petition from General Motors (GM) on a very similar issue. [69 FR 19897, Docket No. NHTSA–2002–12366, Apr 14, 2004]. GM provided test results and analyses indicating that while there existed a non-functional vehicle sensitive locking mechanism within the safety belt assembly ELR, the webbing sensitive locking mechanism provided comparable restraint performance to that of a fully functional vehicle sensitive locking mechanism.

In Jaguar Land Rover's case, the vehicle-sensitive locking mechanism is functional, but may slightly exceed the FMVSS 209 Sections 4.3(j)(2)(i) & (ii) requirements, and, also contains a webbing sensitive locking mechanism which provides comparable performance to that of a vehicle sensitive mechanism.

(h) *Vehicle Production:* Vehicle production has been corrected to fully conform to FMVSS 209 Sections 4.3(j)(2)(i) & (ii).

JLR concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

To view JLR's petition, test data and analyses in its entirety you can visit *https://www.regulations.gov* by following the online instructions for accessing the dockets and by using the docket ID number for this petition shown in the heading of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that JLR no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after JLR notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2017–09650 Filed 5–11–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Certificate of Foreign Contracting Party Receiving Federal Procurement Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

DATES: Written comments should be received on or before July 11, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie E. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

OMB Number: 1545–2263.

Form Number: Form W–14.

Abstract: Tax on Certain Foreign Procurement, Notice of Purposed Rulemaking, contains proposed regulations under section 5000C of the Internal Revenue Code. The proposed regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains proposed regulations under section 6114, with respect to foreign persons claiming an exemption from the tax under an income tax treaty. Section 5000C imposes a 2% tax on foreign persons (as defined in section 7701(a)(30)), that are parties to specified Federal procurement contracts with the U.S. government entered into on and after January 2, 2011. This tax is imposed on the gross amount of specified Federal procurement payments and is generally collected by increasing the amount withheld under chapter 3. A Form W–14 must be provided to the acquiring agency (U.S. government department, agency, independent establishment, or corporation) to: Establish that they are a foreign contracting party; and If applicable, claim an exemption from withholding based on an international agreement (such as a tax treaty); or Claim an exemption from withholding, in whole or in part, based on an international procurement agreement or because goods are produced, or services are performed in the United States. A Form W–14 must be provided to the acquiring agency if a foreign contracting party has been paid a specified Federal procurement payment and the foreign contracting party is seeking to claim an exemption (in whole or in part) from the tax imposed by section 5000C. Form W–14 must be submitted when requested by the acquiring agency, whether or not an exemption (in whole or in part) is claimed from withholding under section 5000C.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal government.

Estimated Number of Annual Responses: 2,000.

Estimated Time per Response: 5 hrs., 55 mins.

Estimated Total Annual Burden Hours: 11,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 8, 2017.

Laurie E. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–09606 Filed 5–11–17; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Consumer Product Safety Commission

16 CFR Part 1245
Safety Standard Addressing Blade-Contact Injuries on Table Saws; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1245

RIN 3041–AC31

[Docket No. CPSC–2011–0074]

Safety Standard Addressing Blade-Contact Injuries on Table Saws

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission has determined preliminarily that there may be an unreasonable risk of blade-contact injuries associated with table saws. In 2015, there were an estimated 33,400 table saw, emergency department-treated injuries. Of these, CPSC staff estimates that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. CPSC staff's review of the existing data indicates that currently available safety devices, such as the modular blade guard and riving knife, do not adequately address the unreasonable risk of blade-contact injuries on table saws. To address this risk, the Commission proposes a rule that is based, in part, on work conducted by Underwriters Laboratories Inc. The proposed rule would establish a performance standard that requires table saws, when powered on, to limit the depth of cut to 3.5 millimeters when a test probe, acting as surrogate for a human body/finger, contacts the spinning blade at a radial approach rate of 1 meter per second (m/s). The proposed rule would address an estimated 54,800 medically treated blade-contact injuries annually. The Commission estimates that the proposed rule's aggregate net benefits on an annual basis could range from about $625 million to about $2,300 million.

DATES: Submit comments by July 26, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0074, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2011–0074, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Caroleene Paul, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2225; fax (978) 367–9122; email *cpaul@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 2003, Stephen Gass, David Fanning, and James Fulmer, *et al.* (petitioners) requested that the CPSC require performance standards for a system to reduce or prevent injuries from contact with the blade of a table saw. The petitioners are members of SawStop, LLC, and its parent company, SD3, LLC (collectively, SawStop). On October 11, 2011, the Commission published an advance notice of proposed rulemaking (ANPR) to consider whether there may be an unreasonable risk of blade-contact injuries associated with table saws. 76 FR 62678. The ANPR began a rulemaking proceeding under the Consumer Product Safety Act (CPSA). The Commission received approximately 1,600 public comments. The Commission is now issuing a notice of proposed rulemaking (NPR) to address an unreasonable risk of blade-contact injuries associated with table saws that would limit the depth of cut to 3.5 mm or less when a test probe, acting as surrogate for a human body/finger, contacts the spinning blade at a radial approach rate of 1 meter per second (m/s).[1] The information discussed in this preamble is derived from CPSC staff's briefing package for the NPR, which is available on CPSC's Web site at: *https://www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Blade-Contact%20Injuries%20on%20Table%20Saws%20-%20January%2017%202017.pdf.*

II. Statutory Authority

Table saws are ''consumer products'' that can be regulated by the Commission under the authority of the CPSA. *See* 15 U.S.C. 2052(a). Section 7 of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance requirements for a consumer product or that sets forth requirements that a product be marked or accompanied by clear and adequate warnings or instructions. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk or injury. *Id.*

Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7. In accordance with section 9, the Commission may commence rulemaking by issuing an ANPR; as noted, the Commission issued an ANPR on table saws in October 2011. (76 FR 62678 (October 11, 2011)). Section 9 authorizes the Commission to issue an NPR, including the proposed rule and a preliminary regulatory analysis, in accordance with section 9(c) of the CPSA and request comments regarding the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk. *Id.* 2058(c). Next, the Commission will consider the comments received in response to the proposed rule and decide whether to issue a final rule, along with a final regulatory analysis. *Id.* 2058(c)–(f). The Commission also must provide an opportunity for interested persons to make oral presentations of their data, views, or arguments, in accordance with section 9(d)(2) of the CPSA. *Id.* 2058(d)(2).

According to section 9(f)(1) of the CPSA, before promulgating a consumer

[1] The Commission voted 3–2 to publish this notice in the **Federal Register**. Commissioner Robert S. Adler, Commissioner Elliot F. Kaye, and Commissioner Marietta S. Robinson voted to approve publication of the proposed rule. Acting Chair Ann Marie Buerkle and Commissioner Joseph P. Mohorovic voted against publication of the proposed rule. The Commissioners' individual statements are available at *https://www.cpsc.gov/About-CPSC.*

product safety rule, the Commission must consider, and make appropriate findings to be included in the rule, on the following issues:

- The degree and nature of the risk of injury that the rule is designed to eliminate or reduce;
- the approximate number of consumer products subject to the rule;
- the need of the public for the products subject to the rule and the probable effect the rule will have on utility, cost, or availability of such products; and
- the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices. *Id.* 2058(f)(1).

Under section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is ''reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product'' and that issuing the rule is in the public interest. *Id.* 2058(f)(3)(A)&(B). Additionally, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that:

- The voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or that
- substantial compliance with the voluntary standard is unlikely. *Id.* 2058(f)(3(D).

The Commission also must find that expected benefits of the rule bear a reasonable relationship to its costs and that the rule imposes the least burdensome requirements which prevent or adequately reduce the risk of injury for which the rule is being promulgated. *Id.* 2058(f)(3)(E)&(F).

III. The Product

A. Types of Table Saws

Table saws are stationary power tools used for the straight sawing of wood and other materials. The basic design of a table saw consists of a motor-driven saw blade that protrudes through a flat table surface. To make a cut, the operator places the workpiece on the table and, using a rip fence or miter gauge as a guide, pushes the workpiece into the blade (see Figure 1.)

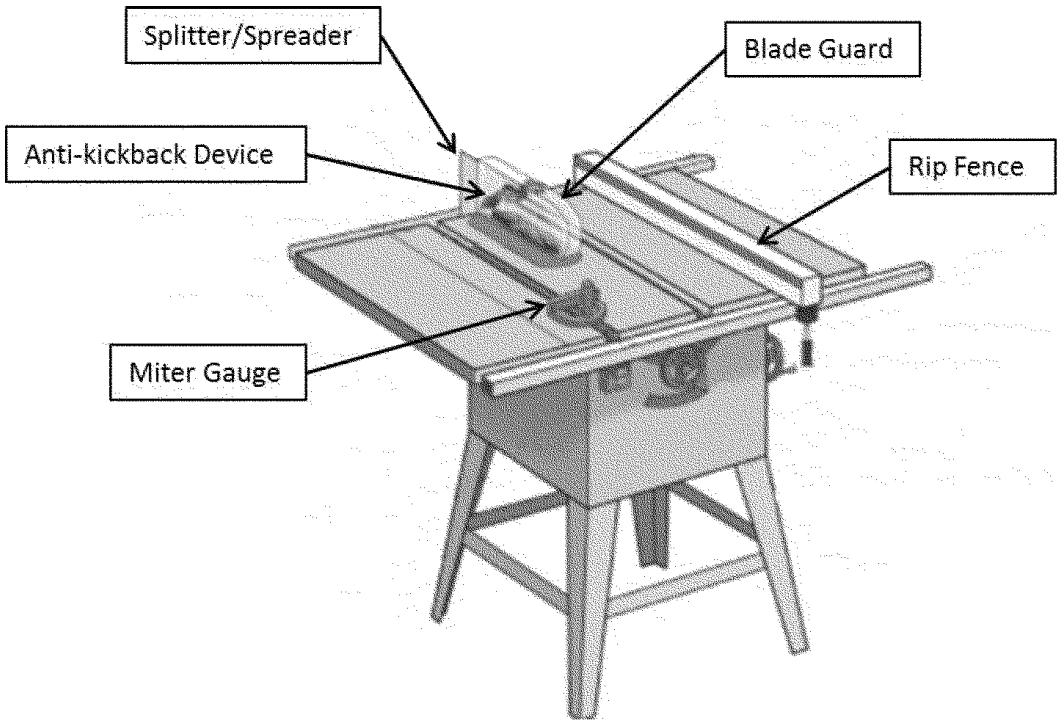

Figure 1. Typical table saw components

Table saws generally fall into three product types: Bench saws, contractor saws, and cabinet saws.[2] Although there is no exact dividing line, the distinction among these types of saws is generally based on size, weight, portability, power transmission, and price.[3]

Bench saws are intended to be transportable, so they tend to be small, lightweight, and relatively inexpensive. In recent years, bench saw designs have evolved to include saws with larger and heavier-duty table surfaces, with some attached to a folding stand with wheels to maintain mobility. These larger portable saws on wheeled stands are called ''jobsite'' saws because they are capable of heavier-duty work, but they are still portable enough to move to work sites.

Bench saws generally run on standard house voltage (110–120 volts), use universal motors,[4] drive the saw blade

[2] Cabinet saws also are referred to as stationary saws because they are not portable.

[3] In addition to these three primary product types, there are also several hybrid saws in the market. This product type blends components of both contractor and cabinet saws. Specifically, hybrid saws have the energy requirements, weight, and mobility of contractor saws with the structure, accuracy, and dust control features of cabinet saws. This product type typically operates in single phase with a voltage range of 110–240 volts, generating 1.75 to two horsepower, depending on the model. There are also sliding saws that are similar to cabinet saws in that they are belt driven, but they are typically equipped with an extension and greater rip- and cross-cutting capacity that allows for cutting large panels. This type of saw can be wired for either single-phase or three-phase operation; however, three-phase wiring is a more common feature for sliding table saws. Sliding saws operate in the 220–440 volt range.

[4] A universal motor runs on AC or DC power, has high starting torque, can run at high speed, and is

Continued

through gears, and range in weight from 34 pounds to 133 pounds. The universal motor and gear drive produce the high decibel noise and vibration that are distinctive characteristics of bench saws. Prices for bench saws range from $129 per model, to as much as $1,499 for a high-end model.

Contractor saws used to be considered portable table saws, but designs have progressed with larger motors and heavier table tops to the point that most contractor saws are considered non-portable. Although a mobile base can be added to the frame to make contractor saws mobile, they are often found in home workshops as non-portable saws that are a less expensive alternative to cabinet saws. Contractor saws generally run on standard house voltage, use induction motors, are belt driven, and range in weight from around 200 pounds to 400 pounds. The induction motor and belt drive result in a table saw that produces less vibration, is quieter, is more accurate, is able to cut thicker pieces of wood, and is more durable than a bench saw. Prices for contractor saws range from around $500 to $2,000.

Cabinet saws are larger, heavier, and more powerful than contractor saws, and their motors are enclosed in a solid base. These saws are typically the highest grade saw found in the home woodworking shop. Cabinet saws generally run on 220–240 volts, use a 1.75–5 hp or stronger motor, are belt driven, and weigh from around 300 pounds to 1,000 pounds. Components in cabinet saws are designed for heavy use and durability, and the greater weight further reduces vibration so that cuts are smoother and more accurate. Cabinet saws are expected to last a lifetime (with an average product life of 24 years), and prices range from around $1,200 to $5,000.

B. Standard Safety Devices

Common safety devices on table saws are designed to reduce contact between the saw blade and the operator and to reduce kickback, a phenomenon in which the saw blade imparts its kinetic energy to the workpiece and ejects the workpiece back towards the operator. The configuration and specific design of these safety devices vary from manufacturer to manufacturer, but the safety devices generally fall into two basic categories: (1) Blade guards, and (2) kickback-prevention devices.

Blade guards surround the exposed blade and function as a physical barrier between the blade and the operator. Blade guards generally are designed either as a single-piece unit that covers the saw blade, as shown in Figure 1, or as a modular system with a fixed-top barrier and independent side barriers.

Kickback-prevention devices include splitters, riving knives, and anti-kickback pawls. A splitter, also commonly called a ''spreader,'' is typically a flat piece of metal, aligned directly behind the saw blade that rides within the cut, or kerf, of a workpiece already fed through the blade. This prevents the workpiece from closing up on itself after it passes the blade and pinching the blade, which can cause the workpiece to be thrown upwards and back toward the operator. Before 2009, most table saws were designed with a splitter located behind the blade that was attached to the blade guard. If a cut required removal of the splitter or guard, they were removed together.

Riving knives are curved metal plates that are similar to, and perform the same function as, splitters, but are often located closer to the blade, rise no higher than the top of the blade, and attach to the arbor assembly so that they are raised and lowered with the blade.[5] Like splitters, riving knives physically prevent the two halves of the cut workpiece from moving back towards each other and pinching the spinning blade. However, unlike splitters, the riving knife can be left on for non-through cuts.

Anti-kickback pawls are another device designed to help reduce kickback. The pawls are mounted on both sides of the splitter and consist of a pair of spring-loaded pieces of metal with barbed teeth on the bottom edge that allow passage of the workpiece but will dig into it if it begins to move back toward the operator.

The riving knife and modular blade guard represent the latest progression in table saw safety design that have been incorporated into the voluntary standards for table saws. As discussed in section VI of the preamble, under *UL 987 Stationary and Fixed Electric Tools,* the voluntary standard effective dates for riving knives and modular blade guards were January 31, 2014, and January 31, 2010, respectively. However, the industry accelerated compliance with the voluntary standard, and the new guarding system with modular blade guards and riving knives became widely available on table saws in 2008. By 2012, table saw manufacturers introduced more than 900,000 table saws with riving knives and modular blade guards.

C. AIM Technology

An active injury mitigation (AIM) system uses technology to actively mitigate or prevent injury of a human body part resulting from contact with a rotating saw blade (*e.g.* by braking, removing, and/or retracting the blade). Thus, any device that detects imminent or actual human contact with the table saw blade and then performs an action that mitigates the severity of the injury is considered to be an AIM system. An AIM system is *active* because it reacts to a blade contact in a way that minimizes the injury. A blade guard is a *passive* system because the guard does not react to a blade contact, but rather, provides a passive barrier between the blade and the user.

CPSC staff considers AIM to be a viable approach to address blade-contact injury in conjunction with existing passive safety strategies (blade guard and riving knife) to prevent blade contact on table saws. AIM systems can provide a layer of safety that can mitigate a blade-contact injury if the blade guard or riving knife are removed or fail to function properly. AIM systems can also protect against blade-contact injuries that can occur when a blade guard and riving knife are in place and functioning properly, but blade contact occurs nonetheless.

An AIM system performs two functions: (1) *Detects* contact between the rotating table saw blade and a human body part, and (2) *reacts* to mitigate injury. In a research report issued in March 2015, UL researched developing performance requirements for table saw safety standards to help address finger injuries due to contact with the blade.[6] The report examined performance requirements that consisted of a defined relationship between approach velocity (speed of finger at a specified angle relative to saw blade) and depth of cut to the finger/hand. In addition, the report focused on the use of a surrogate finger. The report determined that, in addition to the proper trigger attributes, the surrogate finger must possess physical properties that allow it to be cut such that representative, repeatable and reliable measurements of the depth of cut can be recorded.

lightweight and compact. For these reasons, universal motors are commonly used in portable power tools and equipment.

[5] The arbor assembly includes the arbor, which is the metal shaft that holds the saw blade.

[6] Jiang, H., Tabaddor, M., and He, F. (2015). General Characteristics of a Surrogate Finger for Table Saw Safety Testing. *UL Research Report.* Available at: *http://library.ul.com/wp-content/uploads/sites/40/2015/12/UL-Research-Report-on-Finger-Surrogate-Characteristics-for-Table-Saw-Testing-2015.pdf.*

CPSC staff's review of UL's literature research indicates that detection can be achieved by: (1) Sensing electrical properties of the human body/finger; (2) sensing thermal properties of the human body/finger; (3) visual sensing and tracking of the human body/finger; or (4) other methods. Current AIM technologies on the market rely on the first type of detection: Electrical sensing of the human body. CPSC staff based its testing of the AIM system on existing technology.

Reaction systems must perform some type of action to limit the severity of injury upon human body/finger contact with the table saw blade. Removing either the spinning blade or the human body/finger from the point of contact is the most logical method to achieve this goal. Current AIM technologies on the market remove the spinning blade from the point of contact quickly enough, within milliseconds, to reduce significantly the severity of injury.

1. Electrical Detection of Human Body

Current AIM technologies available on table saws in the U.S. market rely on electrical detection of contact between a table saw operator and the rotating saw blade to activate the AIM system. One means of detecting body contact is with circuitry that generates a detection signal with defined electrical characteristics (see Figure 2). The signal can then be coupled onto the saw blade through various means, such as conductive, magnetic, or capacitive coupling devices. Additional circuitry continuously monitors the characteristics of the detection signal. The detection signal changes when a human body part comes into contact with the saw blade and the monitoring circuit senses the change in the signal. If the change is beyond a certain limit, the monitoring circuit then activates a reaction mechanism.

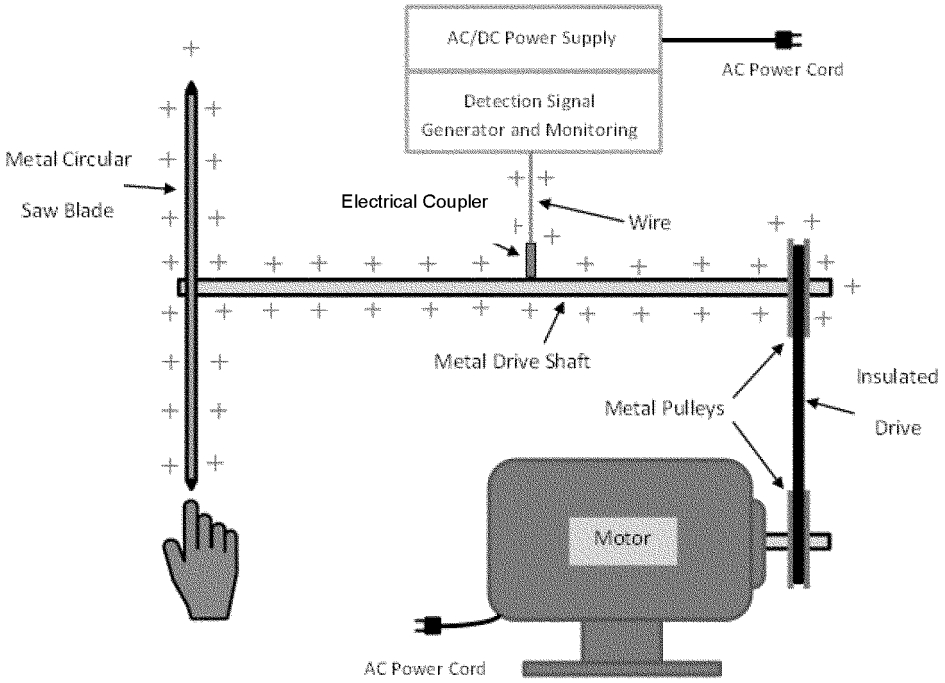

Figure 2. Example of electrical detection of human body

2. Current Products in the Market With AIM Technology

In 2004, SawStop released an industrial table saw featuring AIM technology based on electrical detection of the human body, and a mechanical brake reaction that stops the blade from spinning and moves the saw blade assembly beneath the table top surface. Typically, the reaction occurs in less than 5 milliseconds after contact is detected. Subsequently, SawStop introduced to the market a professional cabinet saw, a contractor saw, and a bench (jobsite) saw with the same AIM technology. The SawStop AIM technology works in three steps:

1. Monitor and Detect

- The blade carries a small electrical signal.
- When a person contacts the blade, the signal changes because the human body is conductive.
- The change to the signal activates the safety system.

2. Brake Activation

- An aluminum brake block is forced into the spinning blade by a spring released by an electric signal.
- The blade's angular momentum drives the blade assembly beneath the table top, removing the risk of further contact.
- Power to the motor is shut off.

3. The AIM system must then be reset by:

- Shutting off the saw.
- Removing the brake cartridge and embedded blade.
- Installing a new blade (if necessary) and brake cartridge.

In 2016, Robert Bosch, LLC (Bosch) released a jobsite table saw featuring AIM technology based on electrical detection of the human body and a combustion-based mechanical reaction that forces the saw blade assembly beneath the table top surface. The Bosch REAXX™ with Active Response Technology™ system (Bosch REAXX™) also works in three steps:

1. Monitor and Detect

- The blade carries a small low-voltage signal.

• When a person contacts the blade, the signal changes because the human body is conductive.
• The change to the signal activates the safety system.
2. Blade Retraction
• A combustion reaction is triggered in a cylindrical cartridge, which fires a piston at a high rate of speed (this action is similar to the deployment of an air bag in an automobile).
• The piston pushes against a linkage to rapidly rotate the saw blade assembly below the table surface away from the operator.
• The blade assembly remains locked under the table after activation, while the blade coasts to a stop after power to the motor is cut off automatically.
3. The AIM system must then be reset by:
• Shutting off the saw.
• Inserting a fresh/new activation cartridge (two cartridges are paired together, so the unactivated side of the same dual-action cartridge may be used).
• Unlocking the blade assembly and raising it back into place.

Neither the SawStop, nor Bosch AIM technologies, can be used when cutting conductive materials (that allow the flow of an electrical current) because both systems rely on electrical detection of the human body. A person touching the conductive material being cut would allow the detection signal to pass through the conductive material and into the person, activating the system as soon as the material touches the saw blade. For this reason, each product has a bypass mode to allow the user to cut conductive materials. In addition, cutting wet wood that is moist enough to conduct enough electricity to activate the AIM system can cause tripping of the safety system. Accordingly, the AIM system generally must be deactivated while cutting wet wood. The table saw automatically exits the bypass mode and resets to normal mode after the saw is turned off and the blade comes to a complete stop.

The Bosch REAXX™ has been the only non-SawStop model with AIM technology available in the United States. Both the SawStop bench model and the Bosch model with the AIM technology are at the upper end of the bench saw price range. The SawStop bench saw model (which was first marketed in 2015) retails for about $1,300 to $1,400 per unit. The Bosch REAXX™ model has a retail price of $1,300 to 1,500. However, the future of the Bosch model is unclear. On July 16, 2015, SawStop filed a complaint against Bosch for patent infringement and requested that the U.S. International Trade Commission (ITC) order U.S. Customs to exclude the Bosch REAXX™ saws from entering the U.S. market.[7] On September 9, 2016, an administrative law judge (ALJ) made an initial determination that the Bosch model does infringe on several SawStop patents.[8] Subsequently, on November 10, 2016, the ITC decided not to review the ALJ's initial determination and requested that the interested parties provide written submissions on the issues related to remedies, the public interest, and bonding. On January 27, 2017, the ITC issued remedial orders including a limited exclusion order and cease and desist order against Bosch effective March 29, 2017. On April 6, 2017, Bosch filed an appeal of the ITC determination in the U.S. Court of Appeals for the Federal Circuit.[9]

IV. Incident Data

CPSC staff's incident data are based on data from the National Electronic Injury Surveillance System (NEISS). NEISS is a national stratified probability sample of approximately 100 U.S. hospitals having 24-hour emergency departments (EDs) and more than six beds. Coders in each hospital code data from the ED record for consumer product-related records, and then the data are transmitted electronically to the CPSC. Because NEISS is a probability sample, each case collected represents a number of injuries (the case's weight) in the total estimate of injuries in the United States. Different hospitals carry different weights.

There are five strata in the NEISS: Children's hospitals, small hospitals, medium hospitals, large hospitals, and very large hospitals. Within each stratum is a sample of hospitals that make up the primary sampling units of the NEISS. For each hospital in the sample, every first-time emergency department visit for an injury associated with a consumer product is recorded.[10] To facilitate injury estimates associated with a product or product group, each injury has a product code that identifies the type of product involved. Other product-specific information, such as the product manufacturer or events leading to the incident, is not recorded in the NEISS. However, information that is recorded for each injury includes sex, age, diagnosis, disposition, and body part. Additional information about the NEISS can be found online at: *http://www.cpsc.gov/en/Research--Statistics/NEISS-Injury-Data.*

For the injury estimates in the proposed rule, CPSC staff reviewed all the incident data abstracted from NEISS hospital records for injuries related to product code 0841 (table or bench saws) for 2015. CPSC staff compared the distributions of table saw injury characteristics against all other workshop product-related injuries and consumer product-related injuries for 2015. Staff performed an injury trend analysis, as well as a risk trend analysis for blade-contact injuries from 2004 to 2015. In addition, CPSC staff reviewed all of the incidents in the CPSC's Consumer Product Safety Risk Management System (CPSRMS) database between January 1, 2004 and December 31, 2015. Finally, in addition to reviewing incident data, to obtain additional information regarding consumer modular blade guard use, in 2015, CPSC conducted a survey of consumers who own table saws with a modular blade guard system (modular blade guard survey).[11]

A. NEISS Data Methodology

The NEISS provides product information associated with each case, by recording up to two product codes associated with a case. CPSC staff's methodology and NEISS estimates are detailed in TAB B of the staff briefing package. Starting with all the NEISS cases associated with product code 0841 (this is, all injuries recorded in the NEISS as associated with a table or bench saw), CPSC staff reviewed and categorized the data, removing any cases that were not related to an operational table saw, and also classified whether the injury could have been due to blade contact. This analysis was completed on every case associated with the product code 0841, with date of treatments recorded as January 1, 2004 through December 31, 2015, resulting in a review of 9,300 NEISS cases.

[7] In the Matter of Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof, Investigation No. 337–TA–965.

[8] Specially, infringement was found in U.S. Patent No. 7,895,927 ('927 Patent), titled, ''Power Equipment with Detection and Reaction Systems''; and U.S. Patent No. 8,011,279 ('279 Patent) titled, ''Power Equipment with Systems to Mitigate or Prevent Injury.''

[9] On July 16, 2015, SawStop also filed a complaint against Robert Bosch Tool Corporation in the U.S. District Court for the District of Oregon (*Sawstop, LLC* v. *Bosch,* CV No. 3:15–cv–1320) (D. Or. filed on July 16, 2015). On September 28, 2015, the Oregon District Court stayed the proceeding in federal court pending final resolution of the ITC's investigation.

[10] NEISS does not record return visits to the emergency department or other follow-up medical visits for the same injury.

[11] Sherehiy, B. and Nooraddini, I. (2016). Table Saw Blade Guard Survey. Available at: *http://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Voluntary-Standards/Voluntary-Standards-Reports/EurekaFactsTableSawBladeGuardSurveyReport(Final6bcleared)updatedcoverpage.pdf.*

For each of the 9,300 cases associated with the table saw product code (0841), with treatment years 2004 through 2015, the first level of review involved removing any cases where the injuries were not related to an operational table saw. Thus, cases not saying ''table saw'' were excluded (*e.g.,* cases that only use the word ''saw'' not ''table saw,'' cases where the injury was related to a park bench, or cases where the saw was a homemade table saw). Cases indicating a ''circular table saw'' were removed. Cases where it was unclear that the injury was from a table saw were removed (*e.g.,* cases using wording like ''table saw vs. chain saw,'' where it is not absolutely certain that the saw was a table saw). Cases were removed when a victim tripped over, fell into, or ran into a table saw and the table saw was not operational. Cases were removed when the injury was related to the table saw being transported, such as the table saw being carried or lifted. Finally, cases were omitted that were related to using the product for an extended period of time (overuse injuries), such as sore knees, elbows, backs, and shoulders. There are cases where it is possible that although ''table saw'' was used to describe the type of saw, narratives also included descriptions such as ''table saw which slipped,'' which might indicate a circular saw, instead of a table saw; however, because ''table saw'' is used to identify the saw type, these are included in the table saw category.

Different types of injuries can occur when using a table saw, some of which do not include blade contact, such as injuries related to only kickback of the stock. Thus, the next level of review for each case was to determine whether the case involved blade contact or not. First, diagnoses of lacerations, fractures, amputations, and avulsions [12] that were for body parts below the elbow (not including the elbow), were all classified as blade contact, then staff reviewed the NEISS narratives to determine if any were described as not blade contact. Unless otherwise stated in the NEISS narrative, staff considered these combinations of diagnosis and body part to involve blade contact. CPSC staff reviewed the cases for the remaining combinations of diagnosis and body part for any that could be blade contact. Cases were included from this group only if the NEISS narrative indicated a hazard pattern of blade contact while using a table saw.

Given the limited amount of descriptive information related to the incidents available within the NEISS, staff believes that some cases could have been included that did not involve blade contact within the 0841 product code, leading to overestimates in blade-contact injuries. On the other hand, staff also believes that table saw blade contact cases may have been excluded within product codes 0845 (saws, not specified) and 0895 (power saws, other or not specified), leading to an underestimate of table saw blade-contact injuries. CPSC staff does not know to what extent either of these caveats affects the results. However, these caveats have been applied to CPSC staff's analysis for both the 2015 injury data and trend analysis results from 2004 through 2015.

B. Emergency Department-Treated, Table Saw Blade-Contact Injury Analysis Results for 2015

In 2015, there were an estimated 33,400 table saw, emergency department-treated injuries. Of these, CPSC staff estimates that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. Of the 30,800 emergency department-treated, blade-contact injuries, an estimated 28,900 injuries (93.8 percent) involved the finger. The most common diagnoses in blade-contact injuries in 2015, are as follows:

- An estimated 18,100 laceration injuries (58.8 percent),
- an estimated 5,900 fractures (19.0 percent),
- an estimated 4,700 amputations (15.2 percent), and
- an estimated 2,000 avulsions (6.5 percent).

An estimated 3,800 (12.3 percent) of the blade-contact injury victims were hospitalized. Table 1 provides the emergency department-treated, blade-contact injury estimates for the NEISS variables for age (provided in age groups in the table), sex, body part injured, diagnosis, disposition, and locale. Males represent the majority of victims with blade-contact injuries (96.4 percent); and an estimated 45 percent of injuries occurred to victims over age 61.

TABLE 1—VICTIM AND INJURY CHARACTERISTICS OF TABLE SAW BLADE-CONTACT INJURIES, 2015

	n	Injury estimate			Percent of total
		Estimate	CV †	95% confidence interval	Estimate
Total	642	30,800	0.09	25,400–36,200	100%
Age Group:					
≤20	16	*	*	*	*
21–30	51	2,200	0.16	1,500–2,800	7.0
31–40	76	3,800	0.18	2,500–5,200	12.5
41–50	96	4,100	0.15	2,900–5,300	13.2
51–60	133	6,400	0.14	4,600–8,100	20.7
61–70	153	8,200	0.14	5,900–10,400	26.6
71–80	88	4,300	0.16	3,000–5,600	14.0
81+	29	1,300	0.20	800–1,800	4.1
Sex:					
Male	622	29,700	0.09	24,400–34,900	96.4
Female	20	*	*	*	*
Body Part:					
Finger	592	28,900	0.10	23,200–34,500	93.8
Hand	46	1,600	0.18	1,100–2,200	5.3
Other	4	*	*	*	*
Diagnosis:					

[12] Merriam Webster Dictionary defines ''avulsion'' as ''a tearing away of a body part accidentally or surgically.'' *https://www.merriam-webster.com/dictionary/avulsion.*

TABLE 1—VICTIM AND INJURY CHARACTERISTICS OF TABLE SAW BLADE-CONTACT INJURIES, 2015—Continued

	n	Injury estimate			Percent of total
		Estimate	CV †	95% confidence interval	Estimate
Laceration	372	18,100	0.11	14,200–22,000	58.8
Fracture	112	5,900	0.17	3,900–7,800	19.0
Amputation	119	4,700	0.18	3,000–6,300	15.2
Avulsion	37	2,000	0.24	1,100–2,900	6.5
Other	2	*	*	*	*
Disposition:					
Treated and Released	537	26,800	0.10	21,600–32,100	87.1
Hospitalized **	98	3,800	0.20	2,300–5,300	12.3
Other	7	*	*	*	*
Locale Where Injury Occurred:					
Home	416	20,600	0.11	16,200–25,100	67.0
Unknown	223	10,100	0.19	6,400–13,900	32.9
Other	3	*	*	*	*

Cells marked by "*" indicate an estimate that does not meet CPSC reporting limits.
** Hospitalization refers to the combination of two dispositions: Treated and transferred, treated and admitted.
† Coefficient of variation (CV) is a measure of the dispersion of the data as a ratio of the standard deviation to the estimate. The higher the CV, the larger the dispersion; for estimates derived from the NEISS, a CV over 0.33 is high.

C. Table Saw Blade-Contact Injuries Versus Other Product-Related Injuries for 2015

CPSC staff compared emergency department-treated injuries from table saw blade- contact against all other consumer product-related emergency department-treated injuries, to identify demographic groups and hazard patterns that are specific to table saw blade-contact, emergency department-treated injuries.

CPSC staff's review showed that table saw blade-contact injuries have a much larger proportion of injuries to fingers (compared to all other types of consumer products) and have significantly larger proportions of diagnoses for lacerations and amputations. An estimated 18.6 percent of all amputations in the NEISS are related to table saws. Table 2 compares emergency department-treated injuries from table saw blade contact identified in the 2015 NEISS to all other consumer product-related, emergency department-treated injuries in the same timeframe (January 1, 2015 through December 31, 2015).

TABLE 2—COMPARISON OF VICTIM CHARACTERISTICS FOR TABLE SAW BLADE-CONTACT INJURIES VERSUS ALL OTHER CONSUMER PRODUCT-RELATED INJURIES, 2015

	Domain						Rao-Scott χ^2 p-value
	Table saws			All consumer products (excluding table saws)			
	n	Estimate *	% of 30,800	n †	Estimate *	% of 14,098,700 ‡	
Total	642	30,800	100%	358,425	14,098,700	100%	N/A
Age Group ***:							
≤20	16	*	*	168,496	5,513,200	39.1	<0.0001
21–30	51	2,200	7.0	40,098	1,709,000	12.1	
31–40	76	3,800	12.5	30,973	1,384,500	9.8	
41–50	96	4,100	13.2	27,878	1,257,700	8.9	
51–60	133	6,400	20.7	29,082	1,290,600	9.2	
61–70	153	8,200	26.6	22,123	1,039,900	7.4	
71–80	88	4,300	14.0	17,817	860,200	6.1	
81+	29	1,300	4.1	21,923	1,042,900	7.4	
Sex **:							
Male	622	29,700	96.4	195,134	7,438,000	52.8	<0.0001
Female	20	*	*	163,291	6,660,800	47.2	
Locale:							
Home	416	20,600	67.0	161,190	6,564,100	46.6	<0.0001
Unknown	223	10,100	32.9	98,418	3,820,100	27.1	
Other	3	*	*	98,817	3,714,600	26.3	
Body Part:							
Finger	592	28,900	93.8	29,987	1,209,800	8.6	<0.0001
Hand	46	1,600	5.3	17,089	732,000	5.2	
Other	4	*	*	311,349	12,157,000	86.2	
Diagnosis:							
Laceration	372	18,100	58.8	63,727	2,510,600	17.8	<0.0001
Fracture	112	5,900	19.0	54,210	2,037,500	14.5	
Amputation	119	4,700	15.2	584	20,400	0.1	

TABLE 2—COMPARISON OF VICTIM CHARACTERISTICS FOR TABLE SAW BLADE-CONTACT INJURIES VERSUS ALL OTHER CONSUMER PRODUCT-RELATED INJURIES, 2015—Continued

	Domain						Rao-Scott χ^2 p-value
	Table saws			All consumer products (excluding table saws)			
	n	Estimate *	% of 30,800	n †	Estimate *	% of 14,098,700 ‡	
Other	39	2,200	7.0	239,904	9,530,200	67.6	
Disposition:							
Treated and Released	537	26,800	87.1	323,369	12,768,300	90.6	0.0095
Hospitalized#	98	3,800	12.3	29,203	1,120,300	7.9	
Other	7	*	*	5,853	210,100	1.5	

* CVs for the table saws for reported estimates range from 0.09 to 0.24. CVs for estimates for the other products range from 0.07 to 0.25.
** Two observations are classified as "unknown sex" in the NEISS in the timeframe. These two observations were omitted to facilitate comparisons. This does not affect any conclusions or comparisons.
*** To facilitate comparisons, 35 observations with unknown ages are not used in the age group analysis; thus, the statistics provided for age group do not necessarily sum exactly to totals. This does not affect any conclusions.
† This "n" is smaller than all of the NEISS, due to cases omitted from the product code 0841 (see Methodology section) as not related to a table saw or blade contact.
‡ Percentages are calculated prior to rounding.
# Hospitalization refers to the combination of two dispositions: Treated and transferred, treated and admitted.

CPSC staff's review showed differences in the injury distributions of age groups when comparing table saw blade-contact injuries to all other consumer product-related injuries. Older age groups represent larger proportions in table saw injuries than with all other products. Approximately 75 percent of the estimated table saw blade-contact injuries occur to people within the age range of 41 through 80. The proportion of all other consumer product-related injuries for the 41 through 80 age groups is approximately 30 percent. Almost all injuries involving table saw blade contact involve males; whereas, with all consumer products, there is only a slightly larger male proportion.

CPSC staff also compared table saw blade-contact injuries and all other woodworking workshop, product-related injury estimates to identify any demographic groups and hazard patterns that are specific to table saw blade-contact injuries within groups that are more likely to have been exposed to table saws. Table saws, in particular, table saw blade-contact injuries, represented a larger proportion of injuries to fingers than all other workshop products (which include tools such as radial arm saws, miter saws, circular saws, band saws, and routers, along with other power and manual woodworking tools). In addition, table saw blade-contact injuries have significantly larger proportions of diagnoses for lacerations, fractures, and amputations, than injuries associated with all other workshop products. CPSC staff's review showed that table saws account for an estimated 52.4 percent of all amputations related to workshop products.

Table 3 compares table saw blade-contact, emergency department-treated injuries from the 2015 NEISS to all other workshop product-related, emergency department-treated injuries in the same timeframe (January 1, 2015 through December 31, 2015).

TABLE 3—COMPARISON OF VICTIM CHARACTERISTICS FOR TABLE SAW BLADE-CONTACT INJURIES VERSUS ALL OTHER WORKSHOP PRODUCT-RELATED INJURIES, 2015

	Domain						Rao-Scott χ^2 p-value
	Table saws			All workshop products (excluding table saws)			
	n	Estimate *	% of 30,800 †	n	Estimate *	% of 270,500 †	
Total	642	30,800	100%	5,313	270,500	100%	
Age Group:							
≤20	16	*	*	702	29,500	10.9	<0.0001
21–30	51	2,200	7.0	943	46,300	17.1	
31–40	76	3,800	12.5	952	50,400	18.6	
41–50	96	4,100	13.2	979	50,400	18.6	
51–60	133	6,400	20.7	887	46,000	17.0	
61–70	153	8,200	26.6	536	30,000	11.1	
71–80	88	4,300	14.0	243	13,800	5.1	
81+	29	1,300	4.1	71	4,100	1.5	
Sex:							
Male	622	29,700	96.4	4,582	234,600	86.7	<0.0001
Female	20	*	*	731	35,900	13.3	
Locale:							
Home	416	20,600	67.0	2,976	158,900	58.8	0.0049
Unknown	223	10,100	32.9	2,152	103,300	38.2	
Other	3	*	*	185	8,300	3.1	
Body Part:							

TABLE 3—COMPARISON OF VICTIM CHARACTERISTICS FOR TABLE SAW BLADE-CONTACT INJURIES VERSUS ALL OTHER WORKSHOP PRODUCT-RELATED INJURIES, 2015—Continued

	Domain						Rao-Scott χ^2 p-value
	Table saws			All workshop products (excluding table saws)			
	n	Estimate *	% of 30,800 †	n	Estimate *	% of 270,500 †	
Finger	592	28,900	93.8	2,022	101,800	37.6	<0.0001
Hand	46	1,600	5.3	838	44,400	16.4	.....
Other	4	*	*	2,453	124,300	46.0	.....
Diagnosis:							
Laceration	372	18,100	58.8	2,562	132,100	48.8	<0.0001
Fracture	112	5,900	19.0	378	18,600	6.9	.....
Amputation	119	4,700	15.2	108	4,200	1.6	.....
Other	39	2,200	7.0	2,265	115,600	42.8	.....
Disposition:							
Treated and Released	537	26,800	87.1	5,027	258,400	95.5	<0.0001
Hospitalized ‡	98	3,800	12.3	219	8,700	3.2	.....
Other	7	*	*	67	3,300	1.2	.....

* CVs for the table saws for reported estimates range from 0.09 to 0.24. CV's for estimates for the all other workshop products range from 0.08 to 0.20.
† Percentages are calculated prior to rounding.
‡ Hospitalization refers to the combination of two dispositions: Treated and transferred, treated and admitted.

When table saw blade-contact injuries were compared to all other workshop product-related injuries, CPSC staff identified differences in the distributions of age groups. Older age groups represented larger proportions of table saw blade-contact injuries than for other workshop products. Approximately 45 percent of the estimated table saw blade-contact injuries occurred to people within the age range of 61 through 80. In comparison, the proportion of all other workshop product-related injuries for the 61 through 80 age groups was approximately 18 percent. Accordingly, the mean age for table saw blade-contact injuries was 55.6 years, in comparison to 42.7 years for all other workshop product-related injuries. This approximate 13-year difference in the mean age of people sustaining injuries is a statistically significant difference (p-value < 0.0001), indicating that table saw blade-contact injuries involve older victims compared to injuries related to all other workshop products.

D. Trend Analysis for Table Saw Injuries

CPSC staff estimated the yearly injuries associated with table saw blade-contact injuries from 2004 to 2015, using estimates from NEISS. As mentioned in section III.B. of the preamble, *UL 987 Stationary and Fixed Electric Tools* includes provisions requiring a riving knife and modular blade guard. The voluntary standard effective dates for riving knives and modular blade guards was January 31, 2014, and January 31, 2010, respectively. The date range for the trend analysis includes a timespan before the voluntary standard required table saws to be equipped with a riving knife and modular blade guard (2004 to 2009) and a timespan after the voluntary standard requirements became effective on most table saws (2010 to 2015). Table saws manufactured before the current voluntary standard remain in use throughout this entire period. However, in more recent years, after the current voluntary standard became effective, an increasing proportion of table saws in use conform to the current voluntary standard. Thus, if the voluntary standard was having an impact on the number or severity of injuries, there would be a steady decrease in the number of injuries or severity of injuries as the proportion of table saws compliant with the new standard increased. However, CPSC staff's analysis shows that the addition of the riving knife and modular blade guard in the voluntary standard has not reduced the number or severity of blade-contact injuries.

CPSC staff performed trend analyses for blade-contact injuries, as well as blade contact amputations, hospitalizations, and finger/hand injuries. CPSC staff concludes that there is no discernible change in the number of blade-contact injuries or types of injuries related to table saw blade contact from 2004 to 2015. Furthermore, CPSC staff concludes that there is no discernible change in the number of blade-contact injuries or types of injuries related to table saw blade contact from the timespan before the voluntary standard was implemented (2004–2009) to the time span after the implementation of the voluntary standard requiring the riving knife and modular blade guard on all table saws (2010–2015). The estimated number of table saw blade-contact, emergency department-treated injuries from 2004 through 2015 is in Table 4.

TABLE 4—NEISS ESTIMATES FOR TABLE SAW BLADE-CONTACT INJURIES, 2004–2015

Year	Table saw blade-contact injury estimates			
	N	Estimate	CV	95% confidence interval
2015	642	30,800	0.09	25,100–36,500
2014	631	30,300	0.08	25,300–35,300
2013	662	29,500	0.09	24,500–34,500
2012	648	29,500	0.09	24,100–34,900
2011	632	29,600	0.09	24,300–35,000

TABLE 4—NEISS ESTIMATES FOR TABLE SAW BLADE-CONTACT INJURIES, 2004–2015—Continued

Year	Table saw blade-contact injury estimates			
	N	Estimate	CV	95% confidence interval
2010	657	30,100	0.10	24,000–36,200
2009	714	33,000	0.10	26,500–39,500
2008	723	34,600	0.09	28,700–40,500
2007	694	31,100	0.09	25,400–36,700
2006	766	34,200	0.09	27,900–40,400
2005	812	34,500	0.09	28,300–40,700
2004	773	36,300	0.09	29,600–43,100

To assess any changes across time in the severity of table saw blade-contact injuries, CPSC staff performed trend analyses for blade-contact amputations, hospitalizations (includes two dispositions: Treated with admission and treated with transfer), and finger/hand injuries. No trend was detected in any of these analyses (p-values = 0.44, 0.53, and 0.17 for amputations, hospitalizations, and finger/hand injuries, respectively). Table 5 provides the estimated number of blade-contact injuries from 2004 through 2015, for amputations, hospitalizations, and finger/hand injuries from blade contact, with the percentage of each to the total number of estimated blade-contact injuries (Table 4).

TABLE 5—NEISS INJURY ESTIMATES FOR TABLE SAW BLADE-CONTACT AMPUTATIONS, HOSPITALIZATIONS, AND FINGER/HAND INJURIES, 2004–2015

Year	Amputations		Hospitalizations		Finger/hand injuries	
	Estimate (95% CI)	% of blade-contact injuries	Estimate (95% CI)	% of blade-contact injuries	Estimate (95% CI)	% of blade-contact injuries
2015	4,700 (3,100–6,300)	15.2	3,800 (2,300–5,300)	12.3	30,500 (24,900–36,100)	99.1
2014	4,000 (2,400–5,500)	13.1	3,100 (1,700–4,400)	10.1	29,400 (24,600–34,300)	97.2
2013	3,400 (2,300–4,600)	11.7	3,000 (1,800–4,200)	10.2	29,200 (24,300–34,200)	99.2
2012	4,100 (2,700–5,600)	13.9	2,900 (1,300–4,400)	9.8	29,100 (23,700–34,400)	98.7
2011	3,900 (2,700–5,100)	13.2	2,900 (1,900–3,900)	9.9	29,400 (24,200–34,700)	99.3
2010	3,500 (2,500–4,500)	11.6	2,800 (2,000–3,600)	9.2	29,800 (23,700–36,000)	99.2
2009	4,100 (3,000–5,200)	12.5	3,000 (2,000–3,900)	9.0	32,500 (26,100–38,900)	98.5
2008	3,700 (2,700–4,600)	10.6	2,600 (1,700–3,400)	7.4	34,200 (28,300–40,100)	98.7
2007	3,900 (2,600–5,200)	12.6	3,000 (1,800–4,100)	9.5	30,700 (25,100–36,200)	98.7
2006	4,300 (3,100–5,500)	12.5	2,700 (1,600–3,800)	7.9	33,700 (27,500–39,900)	98.7
2005	4,600 (3,100–6,200)	13.5	2,800 (2,000–3,600)	8.2	34,100 (28,000–40,200)	98.9
2004	5,100 (3,600–6,700)	14.1	2,900 (1,900–3,900)	8.0	36,000 (29,300–42,800)	99.2

CPSC staff also conducted a trend analysis to include the rate of injury (that is, the rate of injury, measured by the numerator as the estimated number of injuries and the denominator as the exposure estimate). Based on the information available, CPSC staff analyzed the risk of blade-contact injury using the estimated number of table saws in use for each year from 2004 to 2015. Table 6 provides the risk of blade-contact injury per 10,000 table saws in use for each year in the analysis. The estimated numbers of table saws in use yearly is provided in TAB C of the staff briefing package.

[13] No estimates of variance or covariance associated with the number of table saws in use were calculated. CPSC staff determined that the ability to detect trend is increased by omission of the variance-covariance associated with the denominator variable (thus, creating a more conservative approach). Variance for will increase if using both numerator and denominator variance and covariance structures; this makes it harder to detect trend mathematically. However, CPSC staff determined that there is minimal impact on the analyses performed, and conclusions are unlikely to change if another method was chosen.

[14] CVs for estimates are equivalent to the CVs for injury estimates, due to no variance estimates being used for the denominator estimates.

TABLE 6–ESTIMATED TABLE SAW BLADE-CONTACT INJURIES PER 10,000 TABLE SAWS IN USE, 2004–2015

Year	Table saw blade-contact injury estimates		Estimated number of table saws in use (in 10,000s) *	Estimates ** of table saw blade-contact injury per 10,000 table saws in use	
	Blade-contact injury estimate	95% Confidence interval	Table saws in use estimate [13]	Estimate [14]	95% Confidence interval
2015	30,800	25,100–36,500	813.8	37.8	30.9–44.8
2014	30,300	25,300–35,300	818.6	37.0	30.8–43.2
2013	29,500	24,500–34,500	824.0	35.8	29.8–41.8
2012	29,500	24,100–34,900	832.5	35.4	28.9–41.9
2011	29,600	24,300–35,000	838.9	35.3	29.0–41.7
2010	30,100	24,000–36,200	847.7	35.5	28.3–42.7
2009	33,000	26,500–39,500	873.1	37.8	30.3–45.3
2008	34,600	28,700–40,500	881.5	39.3	32.6–45.9
2007	31,100	25,400–36,700	882.5	35.2	28.8–41.5
2006	34,200	27,900–40,400	865.0	39.5	32.2–46.7
2005	34,500	28,300–40,700	846.3	40.8	33.5–48.0
2004	36,300	29,600–43,100	829.4	43.8	35.7–51.9

* CPSC's Directorate for Economics provided the estimated numbers of table saws in use for this analysis.
** Estimates are calculated from the exact number of injuries point estimate, not the rounded estimate.

CPSC staff's analysis shows that there was no discernible change in the risk of injury associated with blade contact related to table saws from 2004 to 2015. Furthermore, staff concludes that there is no discernible change in the risk of injury associated with blade contact related to table saws from the timespan before the voluntary standard was implemented (2004–2009) to the time span after the voluntary standard's implementation (2010–2015), which required the riving knife and modular blade guard on all table saws.

E. Other Table Saw-Related Injuries

Table saw-related incidents are not commonly reported to CPSC through means other than the NEISS. However, the CPSC received a small number of reports of table saw-related injuries through other means, such as news articles, consumer-submitted reports, attorney-submitted reports, and manufacturer and retailer reports. Reported incidents through means other than the NEISS are entered into the CPSC's CPSRMS database. The CPSRMS database is not a representative sample of all blade-contact injuries, and only injury estimates from the NEISS are used for nationally representative estimates of table saw and/or blade-contact injuries. These are anecdotal reports of blade-contact injuries, and the reports are not intended to be used to understand trends or the magnitude of the number of blade-contact injuries.

CPSC staff reviewed this data to understand the scenarios and the injuries associated with table saw blade-contact injuries, information not typically captured within a NEISS report. CPSC staff reviewed all reports in the CPSRMS associated with the product code 0841 (table saws) with incident dates from January 1, 2004 through December 31, 2015. The incident dates chosen match the trend analysis performed on the NEISS for table saws.

CPSC staff identified 53 incidents in the CPSRMS database that involved blade-contact injury on table saws that occurred between January 1, 2004 and December 31, 2015, and the injuries were reported to CPSC by March 1, 2016. The data collection is ongoing for the years 2013, 2014, and 2015, and it is possible for CPSC staff to receive additional reports of blade-contact injuries that occurred during this timeframe. Of the 53 reported blade-contact injuries, 26 were attributable to bench saws, 22 to contractor saws, 2 to cabinet saws, and 3 were unknown.

CPSC staff reviewed whether there were any incidents with unexpected workpiece movement, such as kickback of the workpiece. Table 7 summarizes incidents by unexpected workpiece movement. For the majority of incidents, it is unknown whether unexpected workpiece movement was involved in the blade contact, thus making conclusions difficult. However, of the incidents where information about the contribution of workpiece movement was known, most blade-contact injuries involved some type of unexpected workpiece movement.

TABLE 7—UNEXPECTED STOCK MOVEMENT FOR REPORTED TABLE SAW BLADE-CONTACT INJURIES, 2004–2015

Unexpected workpiece movement	Frequency	Percent
Yes	20	37.7
No	4	7.5
N/A [15]	1	1.9
Unknown	28	52.8
Total	53	* 100.0

* Due to rounding errors, totals may not exactly equal 100.

[15] Stock movement is ''N/A'' in one incident, where the victim was not performing a cut at the time of blade contact. Reportedly, the victim started the saw accidentally, and a nearby object pulled the victim's hand into the blade.

CPSC staff also reviewed all 53 reported incidents to assess the type of blade guard that came with the saw, as well as information on whether the blade guard was in use at the time of the incident. Table 8 provides the frequency of the type of blade guard, by the use of the blade guard.

TABLE 8—TYPE OF BLADE GUARD BY BLADE GUARD USE FOR REPORTED TABLE SAW BLADE-CONTACT INJURIES, 2004–2015

Frequency (row percent)	Blade guard in use				
Type of blade guard	Yes	No	Unknown	N/A [16]	Total
Modular	1	1	9	0	11
	9.1%	9.1%	81.8%	0.0%	
Traditional	7	7	19	3	36
	19.4%	19.4%	52.8%	8.3%	
Other/Unknown [17]	1	2	3	0	6
	16.7%	33.3%	50.0%	0.0%	
Total	9	10	31	3	53

CPSC staff noted that although there are large proportions of unknowns for the blade guard use, making conclusions difficult, out of the 53 reported blade-contact injuries, 36 are associated with a traditional blade guard. Of those 36, seven were reported to be using the blade guard at the time of injury, seven were reported to not be using the blade guard, 19 had an unknown guard use status, and three were not able to use the blade guard. Of the 53 reported blade-contact injuries, 11 are associated with a modular blade guard as part of the original equipment on the table saw. Of those 11, one was reported to be using the blade guard at the time of injury, one was reported to not be using the blade guard, and nine have unknown guard use status. Table 9 shows the frequency of the scenarios for the type of blade guard by injury type.

TABLE 9—INJURY DESCRIPTION FOR REPORTED TABLE SAW BLADE-CONTACT INJURIES, 2004–2015

Injury	Type of blade guard*			
	Modular	Traditional	Other/ unknown/NA	Total
Amputation	4	21	4	29
Amputation and Laceration	0	3	1	4
Fatal Laceration	0	1	0	1
Laceration	2	4	1	7
Laceration and Fracture	1	0	0	1
No Details Provided	4	7	0	11
Total	11	36	6	53

*Table 8 shows that it is often unknown whether a blade guard was in use at the time of the incident. This table does not break down the type of injury and type of guard according to whether the blade guard was in use or not.

Although for many of these injuries it is unknown whether the blade guard was in use at the time of the injury, CPSC staff's review of the reports indicates that the incident scenarios for table saws with modular blade guards are similar to the incidents for table saws with traditional blade guards, in terms of incidents (amputations and lacerations) occurring with and without the use of blade guards, and incidents occurring with and without unexpected stock movement from kickback of the material.

F. Modular Blade Guard Survey

To obtain additional information regarding modular blade guard use, in 2015, CPSC contracted EurekaFacts, LLC (EurekaFacts) to conduct a survey of consumers who own table saws with a modular blade guard system.[18] The survey instrument was designed to identify the potential reasons that may affect how a consumer uses the blade guard. EurekaFacts completed 200 surveys of respondents who owned a table saw manufactured after 2009, or later, that included a modular blade guard. The survey was based on a convenience sample of participants recruited by various advertisement strategies; therefore, no results from the survey are generalized to the population.

Results of the survey indicate that, of the 200 respondents, a majority of respondents (80%) reported that there are circumstances that require the blade guard to be removed, and a majority of respondents did not use the blade guard ''sometimes'' (28%), ''often'' (17%) or ''always'' (14%). The results of the survey demonstrate that for woodworkers who participated in the survey, removal of the blade guard,

[16] Blade guard use is recorded as ''N/A'' in three incidents, when blade guard use was either impossible (Dado cut, molding attachment on a saw from the 1950s), or the victim started the saw accidentally, and his hand was pulled into the blade by a nearby object.

[17] For the six incidents in the blade guard type of ''Other/Unknown,'' one incident is in the ''other'' category, where the blade guard description did not fully meet the traditional description, but the saw was manufactured in the time span of traditional blade guards; the remaining five incidents in this category were classified as ''unknown'' blade guard type, due to the limited information provided.

[18] Sherehiy, B. and Nooraddini, I. (2016), *supra* note 11.

traditional or modular, is a necessary and proper action when making certain cuts on table saws. In addition, many respondents in the survey stated that they chose not to use the modular blade guard at all or only some of the time. CPSC staff believes that any situation in which the blade guard is not used eliminates the effectiveness of the blade guard in preventing blade-contact injuries. Accordingly, use of the blade guard cannot be relied upon to prevent injury.

G. Summary of Incident Data

Based on CPSC staff's review of the existing data, the Commission does not believe that currently available safety devices, such as the modular blade guard and riving knife, will adequately address the unreasonable risk of blade-contact injuries on table saws. In 2015, there were an estimated 33,400 table saw, emergency department-treated injuries. Of these, staff estimates that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. Of the 30,800 emergency department-treated blade-contact injuries in 2015, an estimated 28,900 injuries (93.8 percent) involved the finger. The most common diagnoses in blade-contact injuries are: an estimated 18,100 laceration injuries (58.8 percent); an estimated 5,900 fractures (19.0 percent); an estimated 4,700 amputations (15.2 percent); and an estimated 2,000 avulsions (6.5 percent). An estimated 3,800 (12.3 percent) of the blade-contact injury victims in 2015 were hospitalized.

Thousands of amputations occur each year on table saws; an estimated 4,700 amputation injuries occurred in 2015, alone. Compared to all other types of consumer products, table saw-related amputations are estimated to account for 18.6 percent of all amputations in the NEISS in 2015. When compared to all other workshop products, table saws accounted for an estimated 52.4 percent of all amputations related to workshop products in 2015. The estimated mean age for table saw blade-contact injuries is 55.6; whereas, all other workshop product-related injuries have an estimated mean age of 42.7. This approximate 13-year difference in the mean age of injuries is a statistically significant difference (p-value < 0.0001), indicating that table saw blade-contact injuries involve older victims in comparison to injuries related to all other workshop products.

CPSC staff also reviewed table saw-related reported incidents in the CPSRMS database. Staff identified 53 incidents in the CPSRMS database that involve blade-contact injury on a table saw that occurred between January 1, 2004 and December 31, 2015, and were reported to CPSC by March 1, 2016. Of the 53 reported incidents related to table saw blade contact, 36 incidents involved table saws that came equipped with a traditional blade guard, and 11 incidents involved table saws that came equipped with a modular blade guard. Laceration and amputation injuries occurred on table saws equipped with traditional guards and on table saws equipped with modular blade guards. In addition, CPSC staff's review of the reports indicates that the incident scenarios for table saws with modular blade guards are similar to table saws with traditional blade guards in terms of incidents occurring with and without the use of blade guards and incidents occurring with and without unexpected workpiece movement from kickback of the material.

Finally, CPSC staff' review of the modular blade guard survey shows that, for woodworkers who responded to the survey, removal of the blade guard, traditional or modular, is a necessary and proper action when making certain cuts on table saws. In addition, many woodworkers selected in the survey chose not to use the modular blade guard at all or only some of the time.

Based on CPSC staff's review of the incident data, the Commission believes that operator finger/hand contact with the table saw blade is a dominant hazard pattern that presents an unreasonable risk of injury that can be addressed by a performance requirement to reduce the frequency and severity of blade-contact injuries on table saws. The proposed performance requirement is discussed in section VII of the preamble.

H. Special Studies

As discussed in the ANPR, in 2001, CPSC performed a NEISS special study for stationary power saw-related injuries.[19] The purpose of the survey was to collect more specific and accurate information about the type of table saw involved and also to collect more in-depth information about the hazard pattern and contributing factors to the injuries. The results were published in a memorandum, ''Injuries Associated with Stationary Power Saws, 2001.'' [20] In 2007, CPSC staff conducted, through a contractor, another stationary power saw special study, running through 2008. The report, ''Survey of Injuries Involving Stationary Saws: Table and Bench Saws, 2007–2008,'' presented estimates of the numbers and types of emergency department-treated injuries related to table saws in this 2-year study, which was published in March 2011.[21] In October 2011, the ANPR used the 2007–2008 special study estimates as the analytical support for the discussion of table saw-related injuries.[22]

However, the public comments submitted to the CPSC in response to the ANPR called attention to a contradiction between the estimated numbers for each type of table saw and the estimated injuries of direct-drive and indirect-drive table saws in the 2007–2008 special study.[23] As a result of these comments, CPSC staff reanalyzed the saw-type and drive-type responses provided by the injury victims in the 2007–2008 special study. CPSC published the results of the reanalysis in June 2014.[24] CPSC staff found that the estimated number of injuries based on the type of saw were inconsistent with the estimated injuries associated with respondent-declared drive type, which indicated that bench saws may be associated with a much larger proportion of the estimated injuries than initially reported.

To address the inconsistencies about the distribution of type of table saw in table saw-related injuries in the 2007–2008 special study, CPSC staff conducted a second special study on table saws in 2014–2015. This study, performed by contractors, collected computer-aided telephone interview (CATI) responses from 275 individuals treated for injuries related to stationary saws (this category includes table saws) and to unidentified types of saws in emergency departments of NEISS member hospitals between July 2014 and December 2015. For injuries determined to be table saw-related, interviewers read definitions to the participants regarding each table saw type, and interviewers asked additional questions when the participant identified a saw and drive type that were not compatible.

As explained in TAB F of the staff briefing package, after the contractors completed the 2014–2015 special study,

[19] 76 FR 62680–81.

[20] *https://www.cpsc.gov/s3fs-public/pdfs/powersaw.pdf.*

[21] *http://www.cpsc.gov//PageFiles/118311/statsaws.pdf.*

[22] 76 FR 62681.

[23] Staff's economic analysis in the ANPR briefing package first noted that there was an apparent inconsistency between some study participants' responses to the type of saw used and their responses about the type of drive system used in the saw.

[24] *http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/Home%20Maintenance%20and%20Construction/CoverpageandMemoofStaffAnalysisofTableSawTypeinNEISSSpecialStudy.pdf.*

CPSC staff identified patterns in participant response data across the 275 completed survey responses that indicated that the interviewer may have affected the participants' responses, a phenomenon known as ''interviewer effect.'' Ninety-four percent (259) of the completed surveys were conducted by two interviewers from one company. Statistically significant differences between responses collected by the two interviewers existed for critical questions, such as the type of table saw involved in the injury, use of safety features, and activities preceding the injury. Because the integrity of the responses was indeterminable, CPSC staff did not use the 2014–2015 special study results as a basis for the proposed rule.

In addition, contractor interviewer information from the 2007 to 2008 special study was not available, so CPSC staff was unable to prove or disprove whether interviewer effect impacted that study's responses. Accordingly, CPSC staff did not use the data from either of the prior special studies to inform recommendations in the proposed rule for a performance requirement to address table saw blade-contact injuries.

V. Risk of Injury

A. Description of Hazard

CPSC staff reviewed analyses of finger injuries on table saws conducted by researchers at the University of Michigan in a study titled, ''*Table Saw Injuries: Epidemiology and a proposal for preventive measures,*'' which was commissioned by UL.[25] UL extracted sections from that study, with some modifications, for its report, ''*Table Saw Hazard Study on Finger Injuries Due to Blade Contact.*'' [26] The UL report indicated that lacerations to the finger or hand of varying severity are the most common injury associated with table saw operator blade contact. The severity of injury ranges from minor cuts to severe cuts and injuries resulting in amputation. Finger lacerations can be classified into two categories by the extent of damage to the structures of the finger:

(1) Simple lacerations involving damage only from the skin surface to a depth of approximately 2 mm to 4 mm, and

(2) complex lacerations involving cuts deeper than 4 mm that cause damage to tendons, nerves, and blood vessels.

Simple lacerations can be managed at emergency departments with little expertise or by simple at-home care because these cuts generally heal without complications. Conversely, complex lacerations may require skilled microsurgery to repair damaged tendons, nerves, and vessels, and such care often requires hospital stays, transfer to a hospital with the required expertise, and extensive occupational therapy.

According to the UL report, magnetic resonance imaging (MRI) scans show that critical tissues are deepest at the proximal phalanx of the long finger (base of the middle finger) and most shallow at the distal phalanx of the little finger. The neurovascular bundle, which contains the nerves and arteries, is the structure closest to the skin's surface. The mean distance from the surface of the skin to the neurovascular bundle on the tip of the little finger is 4.3 mm.[27] Therefore, UL determined that, based on measurements from the study, a depth of 4 mm is the maximum depth of cut to a finger before serious injury is sustained.[28]

B. Analysis of Operator Behavior in Blade-Contact Injuries

CPSC staff reviewed operator behavior in blade-contact injuries (TAB E of the staff briefing package). The most basic and common cutting operations performed on a table saw are ripping, which involves narrowing the width of a piece of wood or other ''workpiece'' by sawing along its length, and crosscutting, which involves shortening the length of a workpiece by sawing across its width. Anecdotally, ripping appears to be the more common of these two operations in the context of table saw use.

1. Ripping Scenarios

Blade contact may be more likely to occur while the consumer is ripping a workpiece, rather than crosscutting, because consumers often use just their hands to feed the workpiece into the blade while ripping, except when ripping narrow workpieces. Additionally, ripping has greater potential to result in kickback, compared to crosscutting. ''Kickback'' can be defined as the binding of a workpiece in the blade and the consequent thrusting of that workpiece back toward the consumer. Ripping involves the cut workpiece passing between the spinning blade and a rip fence, which forms a fixed boundary that constrains the movement of the workpiece. Thus, any lateral movements or rotation of the workpiece (or misalignment of the fence) may cause the workpiece to bind and be thrown or propelled at the consumer. The sudden movement of the workpiece from kickback can cause the consumer to lose control of the workpiece and lead to blade contact in a number of ways. For example:

- The consumer's hand or push stick can slip off the workpiece, causing the hand to move into the blade.
- The workpiece can strike the consumer's arm or hand, sending the hand into the blade.
- The consumer can reflexively reach for the workpiece to regain control and inadvertently move the hand into the blade.
- The consumer's hand, if positioned behind the blade to hold, support, or remove the workpiece or cutoff, can be ''pulled'' into the blade with the workpiece.

Many of the scenarios may be possible even when a blade guard is in use, because blade guard systems generally are designed to allow free passage of the workpiece into the blade from the front; therefore, other objects, such as hands and fingers also can move into the blade from this direction. Thus, although blade guard systems can reduce the likelihood of blade contact from certain angles and certain approaches, the potential for contact remains. In addition, hand or finger contact with the blade can occur even without kickback. Possible blade contact scenarios during ripping, unrelated to kickback, include the following:

- The consumer's hand gets too close to the blade while feeding the workpiece, particularly small workpieces, and the fingers contact the blade. In some cases, the consumer may be wearing gloves for protection, or because of cool temperatures, and the blade catches the glove and pulls the hand into the blade.[29]
- The consumer reaches near or past the blade to regain control of a workpiece that is slipping, lifting up, falling off the table, or otherwise moving in an unexpected way, and the hand contacts the blade.[30]
- The consumer reaches for a cutoff or brushes debris from the table while

[25] Chung, K. and Shauver, M. 2014. Table saw injuries: Epidemiology and a proposal for preventive measures. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4154236/.*

[26] Table Saw Hazard Study on Finger Injuries Due to Blade Contact, *UL Research Report,* Jan. 2014. Available at: *http://library.ul.com/wp-content/uploads/sites/40/2015/02/UL_WhitePapers_Tablesaw_V11.pdf.*

[27] Staff's analysis of cadaverous tissue data indicates that the measurements presented in UL's research report are relative to the volar (palmar) surface of the skin.

[28] UL Research Report, 2014, *supra* note 26 at 18.

[29] For example, IDI nos. 121018CNE1304.

[30] For example, IDI nos. 080415CCC2550 and 141120CNE0001. Note that in IDI no. 141120CNE0001, a blade guard was in use.

the blade is still spinning and the hand contacts the blade. Saw blades can continue spinning for some time after a table saw has been switched off. Accordingly, some consumers might contact the blade after having already switched off the table saw but before the blade has come to a complete stop. Furthermore, consumers who are aware of the potential for kickback might be motivated to remove a cutoff immediately to prevent a cut piece from kicking back or being thrown in some other way.

- The consumer gets distracted and turns or looks away, causing his or her hand to move into the blade. Such a distraction may not be merely daydreaming, but can include cases in which someone enters the room and the operator diverts their attention to make sure the other person is not placing themselves in a hazardous situation. This may be especially likely if the other person is someone for whom the consumer is responsible, such as a child.
- The consumer slips, stumbles, or otherwise loses balance and inadvertently moves a hand into the blade, possibly as a natural motor response to regain balance. Similarly, if a consumer is startled by something or someone, the consumer may move reflexively or jerk a hand toward the blade.
- The consumer's hand or push stick slips off the workpiece, causing the hand to move into the blade. This scenario is similar to the one cited earlier in the context of kickback, but it is not necessarily preceded by a sudden movement of the workpiece.

Many of these scenarios may be more likely to occur if the consumer is tired, or if the view of the blade or cut is impaired somehow. Working with a table saw for long periods likely would contribute to fatigue, which in turn, can degrade a consumer's decision-making abilities, judgment, reaction time, and vigilance.[31] Even devices and equipment that are intended to protect consumers may adversely affect consumers' ability to monitor a cutting operation with a table saw, and potentially increase the risk of injury. Blade guard systems might contribute to difficulties in seeing where a cut is being made, and consumers sometimes report this as a reason for removing blade guard systems. Staff also notes that consumers typically are instructed to wear eye protection when operating a table saw.[32] Although proper eye gear can provide important protection from projectiles striking the eye, the eye protection may affect one's ability to see a cut clearly, particularly if the eyewear is scratched or partially covered in debris, such as sawdust.

2. Crosscutting Scenarios

Blade contact scenarios involving crosscutting are likely similar to those involving ripping because many of the same potential issues can arise, such as the consumer feeding the workpiece with their hand too close to the blade, reaching past the blade for a cutoff, or becoming distracted. Although the potential for kickback seems less likely for crosscutting than for ripping, kickback still occurs, and the consequent loss of workpiece control can result in the hand contacting the blade. In addition, during a crosscut, the workpiece may become ''jammed'' in the blade guard or anti-kickback device. This may be more likely if the workpiece shifts position or rotates from against the miter gauge. In such a scenario, the consumer may reach toward the blade to adjust the workpiece position or attempt to move the offending portion of the guard system, and inadvertently contact the blade with the fingers.

3. Adult Aging Issues

As discussed in section IV of the preamble and TAB B of the staff briefing package, approximately 45 percent of all estimated table saw-related, emergency department-treated injuries that likely related to the victim making contact with the blade involved consumers older than 60 years of age. Although CPSC staff does not know if older consumers have greater exposure to these products, adult aging is associated with declines in many perceptual, cognitive, and physical abilities, as discussed in TAB E of the staff briefing package. Some of these age-related deficits likely contribute to blade contact incidents with table saws.

CPSC staff identified differences in the distribution of age groups when comparing table saw blade-contact injuries to all other workshop product-related injuries. Staff analysis of injuries in 2015 indicates that the mean age for table saw blade-contact injuries is 55.6 years, compared to 42.7 years for all other workshop product-related injuries. This approximately 13-year difference in the mean age of victims of table saw blade-contact injuries is a statistically significant difference and indicates that table saw blade-contact injuries involve older victims compared to victims of injuries from all other workshop products.

VI. Relevant Existing Standards

A. Voluntary Standards

1. History

In 1971, Underwriters Laboratories Inc. (UL) published the first edition of UL 987, *Stationary and Fixed Electric Tools.* UL 987 included requirements for table saws that specified the following safety devices: A single-piece blade guard, a spreader, and anti-kickback pawls. In 2005, UL published the sixth edition of UL 987, which added riving knives to the general requirements for table saws. The effective date for the riving knife requirements for products already listed with UL was January 2014. In 2007, UL published the seventh edition of UL 987, which expanded the table saw guarding requirements to include a new modular blade guard design developed by a joint venture of the leading table saw manufacturers. The effective date for the modular blade guard requirements was January 2010. The revised standard specified that the blade guard shall not consist of a hood, but comprise a top-barrier guarding element and two side-barrier guarding elements. The new modular guard design was intended to be an improvement over traditional hood guard designs by providing better visibility, offering easier methods to remove and install the guard, and incorporating a permanent riving knife design. In 2011, UL published the eighth edition of UL 987, which clarified requirements for table saws. The eighth edition remains the current edition of UL 987.

In February 2016, UL balloted a proposal to adopt the first edition of International Electrotechnical Commission (IEC) 62841–3–1, *Standard for Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery—Safety—Part 3–1: Particular Requirements for Transportable Table Saws* as the first edition of UL 62841–3–1. This effort is

[31] See Sharit, J. (2006). Human Error. In G. Salvendy (Ed.), *Handbook of Human Factors and Ergonomics,* 3rd ed. at 708–760. Hoboken, NJ: Wiley. Staff also notes that, when ripping, consumers must make sure the workpiece maintains contact with the rip fence for the entire cut. Thus, a consumer's attention is likely to be where the workpiece meets the fence, rather than the blade, for at least part of the cut. This necessarily means that adequate attention cannot be given to the position of the hands relative to the blade. If attention is focused, instead, on the fingers relative to the blade, the workpiece may move off the rip fence and lead to kickback, which also can cause the fingers to contact the blade.

[32] For example, general safety instructions for all power tools, published by the Power Tool Institute (PTI), states that one should ''[a]lways wear eye protection,'' and the section of the document that is specific to table saws states, in part: ''Always wear safety goggles or safety glasses with side shields.'' *See, http://www.powertoolinstitute.com/pti-includes/pdfs/Tool-Specific-Files/Table-Saws.pdf.*

part of UL's international harmonization goal to adopt international standards, such as one published by the IEC (International Electrotechnical Commission) or ISO (International Organization for Standardization), into one UL standard that is based on the IEC/ISO standard, with appropriate national differences.[33] The proposal passed, and in August 2016, UL published the first edition of UL 62841–3–1, *Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery Part 3–1: Particular Requirements for Transportable Table Saws.* UL 62841–3–1 is recognized as an American National Standards Institute (ANSI) standard and includes requirements for a modular blade guard, riving knife, and anti-kickback pawls. The effective date for UL 62841–3–1 is August 29, 2019. Until that date, UL 987 remains in effect, and table saw manufacturers can list their products to UL 987 or UL 62841–3–1.

Currently, UL 987 (Section 43.2.2) and UL 62841–3–1 (Section 19.101) specify that table saws shall be provided with a modular blade guard. UL 987 (Section 43.2.3) and UL 62841–3–1 (Section 19.103) specify that table saws shall be equipped with a riving knife. Both voluntary standards include: (1) Similar performance requirements to ensure that the modular blade guard prevents incidental contact from the top and from both sides of the saw blade; and (2) similar specifications for the location and rigidity of the riving knife.

2. Recent Developments

In June 2011, UL announced its intention to create a standard that addresses the performance characteristics needed to reduce blade-contact injuries associated with table saws, and UL invited CPSC staff to participate in developing blade-to-skin performance requirements for UL 987. UL formed a working group that met regularly during 2011 to 2015 to develop performance requirements for table saws to address flesh-to-blade-contact injuries. The UL working group developed the term ''active injury mitigation'' (AIM) to describe any type of safety system that detects an imminent or actual human contact with the table saw blade and then performs an action that mitigates the severity of the injury.

In January 2014, UL published a report titled, *Table Saw Hazard Study on Finger Injuries Due to Blade Contact.*[34] The report provides an in-depth study with hazard analyses, injury classification, and approach speed experiments. The intent of the research was to understand the circumstances that lead to hand/finger contact injuries for table saw operators and to help identify critical parameters to define the hazard level. The report identified the quantitative threshold between a simple and complex laceration of a finger at about 4 mm from the surface of the skin.

In February 2015, UL balloted a proposal to add AIM requirements for table saws to the *Standard for Stationary and Fixed Electric Tools,* UL 987. The performance requirements were based on a defined relationship between approach velocity of a finger to a rotating table saw blade and the depth of cut to the finger once contact has been made. The ballot proposed a performance requirement that introduced a surrogate test finger that demonstrates the proper triggering characteristics particular to the AIM technology to the table saw blade, at an approach rate of 1 m/s, and that limits the depth of cut to 4 mm or less, upon contact with the blade.

CPSC staff sent a letter to UL dated March 24, 2015, expressing staff's support of AIM requirements in the voluntary standard.[35] Staff also provided in-depth investigations (IDIs) of five incidents that occurred on table saws that met the UL standard for table saws at the time (and had a riving knife and modular blade guard). In April 2015, the ballot failed to reach consensus; the ballot received 14 votes against (versus 7 votes for) the proposal.

In March 2015, UL published a report titled, *General Characteristics of a Surrogate Finger for Table Saw Safety Testing.*[36] The report discusses the attributes of a human finger that could be used as the basis for triggering an AIM system and identified three primary methods to detect a human finger: Visual, electrical, and thermal.

In February 2016, UL balloted two proposals: (1) To adopt the first edition of International Electrotechnical Commission (IEC) 62841–3–1, *Standard for Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery—Safety—Part 3–1: Particular Requirements for Transportable Table Saws* as the first edition of UL 62841–3–1; and (2) to add AIM system requirements for table saws as part of the adoption of IEC or as part of UL 987 (since UL 987 will be merged with IEC 62841–3–1).

Under the proposal, manufacturers were allowed the maximum latitude to design table saws to meet the requirements. The ballot proposed a performance requirement that introduces a conductive test probe, connected to a circuit, which mimics the electrical properties of a human body, to the table saw blade, at an approach rate of 1 m/s, and limited the depth of cut upon contact with the blade to 4 mm or less. The performance requirement also permitted other test probes to be used for AIM technology that depend on visual or thermal detection of finger contact to the blade.

CPSC staff sent a letter of comment to UL, dated March 11, 2016, expressing staff's support of AIM requirements in the voluntary standard for table saws.[37] In April 2016, the UL proposal for adoption of IEC 62841–3–1 reached consensus when the ballot received 15 votes in favor of (versus 2 votes against) the proposal. However, the proposal to add an AIM requirement did not reach consensus; the ballot received 12 votes against (versus 5 votes in favor of) the proposal. The ballots failed, in part, because the table saw industry objected to making AIM requirements part of the UL standard, and because they believed that the proposed requirements were not sufficiently developed.

B. Voluntary Standards and Patent Policy

The American National Standards Institute (ANSI) has a patent policy [38] that is included in the *ANSI Essential Requirements: Due process requirements for American National Standards* (ANSI Requirements). This policy sets forth requirements that apply to situations in which a proposed voluntary standard may require the use of an essential patent claim. UL's Standards Patent Policy [39] contains requirements that are consistent with ANSI's policy.

Section 3.1 of the ANSI Requirements states that if an ANSI-Accredited

[33] *See http://ulstandards.ul.com/about/harmonizing-standards/.*

[34] UL Research Report, 2014, *supra* note 26.

[35] Letter from Caroleene Paul, CPSC, to John Stimitz, UL, dated March 24, 2015. Available at: *https://www.cpsc.gov/s3fs-public/CPSClettertoULcommenttoAIMSproposalwenclosures.pdf.*

[36] UL Research Report, 2015, *supra* note 6.

[37] Letter from Caroleene Paul, CPSC, to John Stimitz, UL, dated March 11, 2016. Available at: *https://www.cpsc.gov/s3fs-public/CPSClettertoULcommenttoAIMS.pdf.*

[38] *See* Section 3.1, *ANSI Patent Policy—Inclusion of Patents in American National Standards of the ANSI Essential Requirements: Due process requirements for American National Standards* (January 2017) available at: *https://share.ansi.org/shared%20documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/2017_ANSI_Essential_Requirements.pdf.*

[39] *See UL Patent Policy* (March 1, 2017) available at: *http://ulstandards.ul.com/develop-standards/stps/ul-patentpolicy/?_ga=l.154860536.1359786552.1492183496.*

Standards Developer (ASD) of a proposed American National Standard is informed that the standard may require the use of an essential patent claim, the ASD shall receive from the patent holder (or its authorized representative) written or electronic:

(a) Assurance in the form of a general disclaimer to the effect that such party does not hold and does not currently intend holding any essential patent claim(s); or

(b) assurance that a license to such essential patent claim(s) will be made available to applicants desiring to utilize the license for the purpose of implementing the standard either: [40]

(i) Under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or

(ii) without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

According to these policies, it appears that a voluntary standard on table saws that may require the use of an essential patent claim might not be adopted if the ASD did not obtain one of the listed assurances from any essential patent holders.

C. Adequacy of the Voluntary Standards in Addressing Injuries

Currently, no voluntary standard contains any requirements for AIM technology. CPSC staff does not believe the existing requirements for a riving knife and modular blade guard will adequately reduce the number or severity of blade-contact injuries on table saws because table saws have been equipped with these safety devices since 2009, and these safety devices have not been effective in reducing or mitigating blade-contact injuries. In 2011, staff evaluated the modular blade guard system and concluded that it is an improvement over the single hood guard design, but its effectiveness is still limited by users' willingness to use the guard.[41]

As discussed in section IV of the preamble, since the ANPR, CPSC staff has conducted a modular blade guard survey among owners of table saws with modular blade guards in 2015, reviewed incidents from the CPSRMS database to identify incidents involving table saws equipped with modular blade guard systems, and performed a trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws from 2004 to 2015.

The modular blade guard survey assessed table saw users who own, or are familiar with, a table saw with the modular guard system.[42] Results of the survey indicate that a majority of respondents (80%) reported that there are circumstances that require the blade guard to be removed, and a majority of respondents did not use the blade guard ''sometimes'' (28%), ''often'' (17%), or ''always'' (14%). The results of the survey demonstrate that removal of the blade guard, traditional or modular, is a necessary and proper action when making certain cuts on table saws. In addition, many users choose not to use the modular blade guard at all. CPSC staff believes that any situation where the blade guard is not used eliminates the effectiveness of the blade guard in preventing blade-contact injuries. Accordingly, staff's review shows that reliance on the blade guard for injury prevention is insufficient because consumers have legitimate reasons for removing the guard or do not use it at all or only some of the time.

CPSC staff is also aware of at least 11 incidents from the CPSRMS database that involve table saws that meet the current voluntary standard requirements for riving knives and modular blade guards. Of those 11 incidents, four incidents involved amputation, two incidents involved laceration, and one incident involved laceration and fracture. These incidents show that blade-contact injuries continue to occur on table saws equipped with riving knives and modular blade guards, with and without the blade guard in use.

Moreover, as discussed above in section IV of the preamble and in TAB B of the staff briefing package, CPSC staff performed a trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws from 2004 to 2015. This trend analysis includes the timespan before the voluntary standard implemented the requirement for riving knives and modular blade guards on table saws (2004 to 2009) and the timespan after the requirements were implemented (2010 to 2015). Staff concludes that there is no discernible change in the number of injuries or types of injuries related to table saw blade contact from 2004 to 2015. CPSC staff also performed a trend analysis for the risk of blade-contact injury per 10,000 table saws and concludes that there is no discernible change in the risk of injury associated with table saw blade contact from 2004 to 2015. Accordingly, the implementation of the riving knives and modular blade guards requirements in the voluntary standards does not appear to have had an impact on the number or extent of blade-contact injuries on table saws.

Based on CPSC staff's evaluation of the data, the Commission concludes that the existing voluntary standard requirements for riving knives or modular blade guards will not prevent or adequately mitigate blade-contact injuries on table saws.

D. OSHA Regulations

In addition to the voluntary standard, several Occupational Safety and Health Act of 1970 (OSHA) regulations apply to table saws that are used in the workplace. Under section 3(a)(5) of the CPSA, 15 U.S.C. 2052, a ''consumer product'' means, with certain exceptions, any article or component part thereof, produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. Section 31 of the CPSA, 15 U.S.C. 2080, provides that the Commission shall have no authority to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by action taken under OSHA. However, if the risk to consumers cannot be sufficiently reduced or eliminated by OSHA's actions, the CPSC has the authority to address that risk of injury associated with the consumer product.

OSHA currently has regulations on table saws used in the workplace, which are codified at 29 CFR 1910.213, Woodworking Machinery Requirements. The OSHA regulations require that table saws in the workplace include a blade guard, a spreader, and an anti-kickback device. 29 CFR 1910.213(c)&(d). The OSHA regulations require the saw be guarded by a hood with certain performance standards including, among other things, requirements that the hood be strong enough to withstand certain pressures, be adjustable to the thickness of the material being cut, and be constructed in a way to protect the operator from flying splinters and broken saw teeth. 29 CFR 1910.213(c)(1). The OSHA regulations also require inspection and maintenance of woodworking machinery. 29 CFR 1910.213(s). The existing OSHA regulations for table saws do not reflect the latest revisions to 8th edition of UL 987, which require riving knives and modular blade guards.

As discussed in the ANPR, CPSC staff found that the primary differences between consumer and professional

[40] The assurances under subsection (b) above are commonly referred to as FRAND Commitments (or fair, reasonable and non-discriminatory).

[41] 76 FR 62683.

[42] Sherehiy, B. and Nooraddini, I. (2016), *supra* note 11.

users of table saws are environment and training/experience.[43] In many work production environments where a specific cut is performed continuously, guards and safety cut-off switches are custom designed for that operation. The area is specifically designed to be as safe as possible, and safety is a continuous focus through warning/instruction signs and posters that are often displayed throughout the work area. The workplace is also subject to spontaneous inspection by OSHA inspectors; therefore, the prospect of being fined for safety violations increases the likelihood that workers or supervisors will help ensure safety codes are followed. In addition, professional woodworkers are in an industrial setting where employees often receive training on safety practices and in the proper use of the tool. Professional woodworkers are more likely to have had training and to be experienced in performing any special or complex operations with the saw and are more likely to recognize situations and set-ups that may be dangerous or require extra care and caution.

Conversely, as the ANPR further discussed, amateur woodworkers generally have little or no safety training, nor training in the proper use of the table saw.[44] They may take woodworking classes or obtain a training video, but there is no mechanism to encourage the home woodworker to use a table saw as safely as possible. The home users typically have far less experience than professional woodworkers and may discover dangerous or difficult operations only by actually experiencing near accidents or problems. The consumer woodworker also does not have the same OSHA-regulated protections in the home wood shop. The focus on a safe environment in a consumer setting depends on the knowledge and initiative of the home woodworker. For example, in a workplace, regulations require that unsafe saws be removed from service immediately, push sticks or push blocks be provided at the work place for guiding or pushing material past the blade, and emphasis be placed on the cleanliness around woodworking machinery and, in particular, the effective functioning of guards and prevention of fire hazards. 29 CFR 1910.213(s).

We continue to believe that OSHA regulations may not adequately reduce the risk of operator blade-contact injuries to consumers because OSHA's regulations are intended primarily to ensure a safer work environment in the professional workplace setting, rather than the home woodworking environment. OSHA regulations rely on a comprehensive approach to promote safe practices in the workplace, including training and outreach, as well as mandatory safety standards and enforcement. These safeguards are not available to consumers operating table saws in a home woodworking environment.

Although the safety requirements provided in OSHA regulations would not address the home woodworking environment, we note that there is no clear dividing line between consumer and professional saws, except at the very highest levels of price and performance. We have little information on the proportion of occupational purchasers for contractor saws and cabinet saws. However, CPSC staff's review shows that, based on discussions with industry representatives, electrical requirements and power appear to provide the best distinction between table saws typically used by consumers and those used most often in industrial settings. Tables saws operating at 1.75 horsepower or greater likely cannot be run on typical household wiring. Most consumers do not have the necessary electrical wiring, specifically the specialized outlets and adapters, to accommodate power tools with horsepower ratings greater than 1.75 or requiring 220–240 volt power. Sliding table saws and many other cabinet saws require such electrical capabilities and, therefore, are less likely to be used by consumers. However, CPSC staff is aware of the development of a sliding saw aimed at the high-end do-it-yourself (DIY) market, and some serious woodworking hobbyists may wire their home workshops to accommodate the more powerful saws.

Although some of the more expensive, high voltage table saws are used in construction work or by professional wood workers, many of these same saws may also be used in the home, in schools, and in recreation (woodworking workshops and clubs). Therefore, the CPSC staff believes that these types of saws may be used more than occasionally by consumers. We note that the incident data reviewed by staff, as discussed in TAB B of the staff briefing package, excludes occupational injuries from the NEISS data, and are not included in the injury data estimates.

Based on CPSC staff's review, the Commission concludes that current OSHA regulations do not adequately address the unreasonable risk of blade-contact injuries associated with table saws used by consumers, which include cabinet and contractor saws. However, the Commission seeks comment regarding whether the scope of the rule should be modified to exclude certain types of table saws that are primarily used for commercial or industrial use.

VII. Overview and Basis for Proposed Requirements

As discussed in section V of the preamble, CPSC staff reviewed data analyses of finger injuries on table saws conducted by researchers at the University of Michigan in a study titled, ''*Table saw injuries: epidemiology and a proposal for preventive measures,*'' [45] and by UL in a report titled, ''*Table Saw Hazard Study on Finger Injuries Due to Blade Contact,*'' [46] to assess the extent and severity of lacerations to the finger or hand from table saw operator bade contact. UL determined that, based on measurements from the study, a depth of 4 mm is the maximum depth of cut to a finger before serious injury is sustained.[47]

After conducting a range of tests on sample table saws with AIM technology, CPSC staff developed a proposed performance requirement to reduce the severity of operator blade-contact injuries on table saws. The proposed requirement would require table saws to limit the depth of cut to 3.5 mm or less when a test probe, acting as surrogate for a human finger, contacts the spinning blade at a radial approach rate of 1 meter per second (m/s).

A. CPSC Test Results on Existing AIM Technology

CPSC staff purchased samples of table saws with AIM technology and developed test protocols to evaluate the performance of the existing technology. UL report ''*Table Saw Hazard Study on Finger Injuries Due to Blade Contact*'' identified critical parameters that would define the hazard associated with a human finger/hand coming into contact with a spinning table saw blade.[48] The two critical parameters identified are:

(1) Approach velocity of the hand/finger when making contact with the table saw blade.

(2) Maximum depth of cut to the hand/finger that would distinguish between simple and complex lacerations.

Due to ethical considerations which prohibit the use of human subjects to

[43] 76 FR 62682.

[44] *Id.*

[45] Chung, K. and Shauver, M., 2014, *supra* note 25.

[46] UL Research Report, 2014, *supra* note 26.

[47] *Id.* at 18.

[48] *Id.* at 3.

test the AIM capability of a table saw to mitigate blade-contact injury, CPSC staff developed a performance test using a suitable test probe to serve as a surrogate for the human finger/hand. In the case of an AIM system that relies on electrical detection, staff developed an electric circuit mimicking human contact to trigger the AIM system. CPSC staff determined that effective injury mitigation can be defined by a maximum depth of cut to the test probe when it is introduced to the table saw blade at a prescribed approach rate. The allowable depth of cut in the probe represents the quantitative threshold between a simple and complex laceration, which is the difference between a minor injury and a severe injury to arteries, nerves, or tendons that requires microsurgery to repair. This threshold is 4 mm from the surface of the skin.

CPSC staff focused on test protocols that introduced a probe, as a substitute for a human finger, into the rotating saw blade and measured the resulting depth of cut on the probe after activation of the table saw's AIM system. Staff determined that an AIM system based on electrical detection can be triggered by a conductive test probe that is coupled to an electric circuit that mimics the human body, hereafter referred to as the human body network (HBN).

The test probe requires two properties: (1) Electrical conductivity, and (2) volumetric and mechanical properties that allow depth of cut to be measured. The probe is electrically coupled to the HBN, which is a network of resistors and capacitors that approximate how the body would respond to an electrical signal. The body's response is the result of two physical properties of the human body: (1) Body resistance, which is a physical property of the human body that limits the flow of electrical current into the body when a voltage source is contacted, and (2) body capacitance, which is a physical property of the human body that allows the body to store electrical charge from a voltage source. A detailed description of staff's development of the HBN for these tests is available in TAB A of the staff briefing package.

CPSC staff used a cuboid-shaped test probe made of conductive silicone rubber because the probe had already been developed by UL in its own testing of AIM technology and the probe was readily available. The test probe, shown in Figure 3, is made of low resistance, conductive silicone rubber measuring 12.5 mm x 12.5 mm x 60 mm. Staff determined that a layer of less conductive material to represent the epidermis (outer layer of skin) of a human finger is not necessary for AIM testing because the system is triggered by contact with conductive ''flesh'' once the epidermal layer has been broken. Therefore, for test triggering purposes, staff used a test probe that represents the conductive layer of human flesh once the epidermis has been cut by a table saw blade.

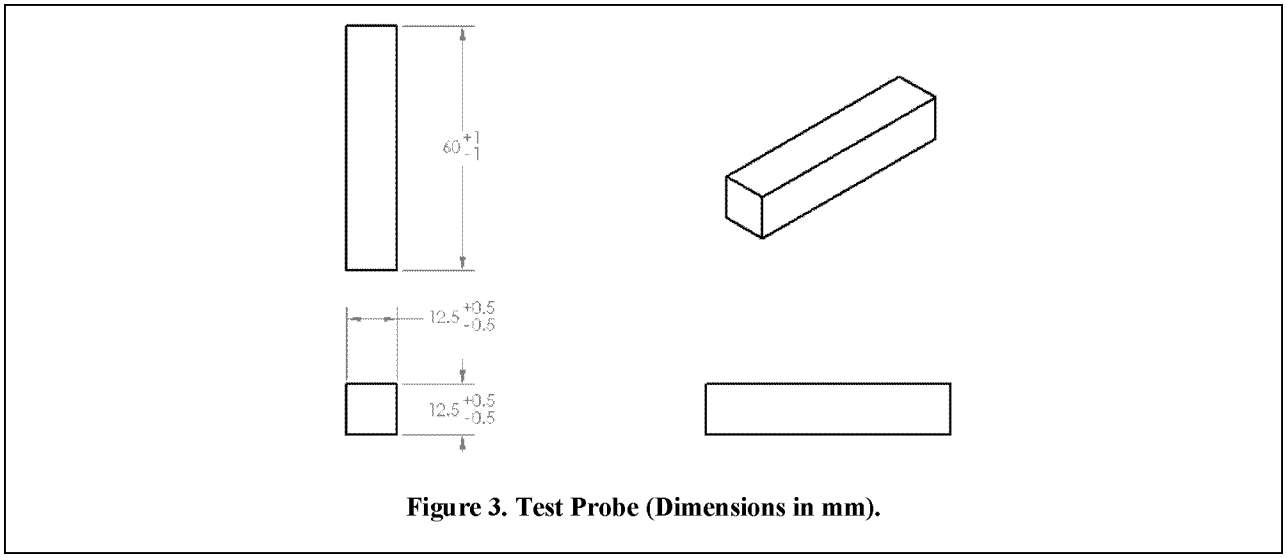

Figure 3. Test Probe (Dimensions in mm).

The quantitative threshold between a simple and complex laceration of a human finger is a 4.0 mm cut from the surface of the skin, and the mean epidermal thickness for a fingertip is 0.369 mm ± 0.112 mm, or a maximum thickness of approximately 0.5 mm.[49] Because the test probe represents human flesh beneath the epidermis, staff subtracted the 0.5 mm thickness of the epidermal layer of skin from the 4.0 mm threshold value to arrive at a 3.5 mm value for the maximum allowable depth of cut to the test probe. This 3.5 mm value represents the quantitative threshold between a simple and complex laceration of a human finger, as measured by the test probe.

Staff coupled the test probe to the HBN with a wire lead, fixed the probe in a holder attached to a computer-controlled linear actuator, and fastened the actuator to the table saw surface. This test protocol allowed staff to control the approach of the test probe to a rotating saw blade and to measure the depth of cut to the test probe after activation of the table saw's AIM system.

The approach rate of the test probe to the saw blade represents the rate of speed at which a human finger moves toward the saw blade during a blade contact incident on a table saw. However, there is no standard body of data that quantifies finger/hand approach rate to the saw blade in a table saw incident, and CPSC staff analysis of blade contact incidents indicates that there are many scenarios in which an operator's finger/hand can contact a table saw blade. These scenarios are described in detail in TAB E of the staff briefing package. Sudden movement from kickback can cause the operator to lose control of the workpiece and cause his/her hand to fall into or be ''pulled'' into the blade. Hand/finger contact is

[49] Judi Whitton and J.D. Everall, ''The Thickness of the Epidermis,'' *British Journal of Dermatology,* Vol. 89, Issue 5 (Nov. 1973) at 467–476.

also possible without kickback in situations where the operator's hand gets too close to the blade while feeding the workpiece or the operator is distracted and inadvertently contacts the saw blade.

In comments to the table saw ANPR published on October 11, 2011, SawStop presented analysis of the company's incident data (over 1,316 table saw incidents), which indicates approach rates to the blade occurred between 3.6 in/s (91 mm/s) and 14.5 in/s (368 mm/s), and 14 percent of the incidents involved kickback of the workpiece.[50] In 2014, UL conducted its own analysis of approach rates and noted the difficulty of taking laboratory measurements of human subjects and translating that information to estimate the approach velocity of an operator's hand or finger toward the center of the saw blade, or radial component of the approach velocity, in an actual blade contact incident (see Figure 4.)[51] UL considered its own analysis of SawStop's incident data, literature searches, and human subject experiments and determined that 39.4 in/s (1000 mm/s or 1 m/s) is a reasonable first-order estimate of a typical case in which a table saw operator accidentally contacts the saw blade.[52]

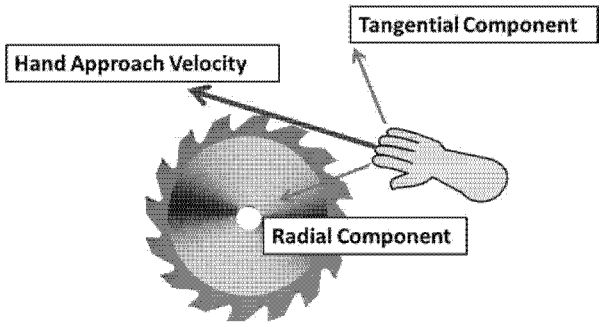

Figure 4. Components of Approach Velocity.

CPSC staff's analysis of operator behavior in table saw blade-contact injuries indicates that blade-contact injuries occur at approach rates that range from slow feeding of the workpiece when the operator's hand is close to the blade and inadvertent contact is made, to faster approach rates that occur when kickback of the workpiece causes the operator's hand to make contact with the blade. Staff concludes that a radial approach rate of 1 m/s is appropriate for a performance test because this is a high rate of speed for the radial component of the hand's approach rate to the saw blade. In addition, this radial approach rate is more than twice as fast as the highest radial approach rate calculated by SawStop in more than a thousand blade-contact injuries that activated their AIM system. Therefore, staff conducted all tests at an approach rate of 1 m/s.

CPSC staff developed a test method to evaluate various existing AIM systems to compare them to the performance standard limiting the depth of cut after triggering, using a test probe that can be used to evaluate the depth of cut when the probe makes contact with the rotating saw blade while approaching the blade at 1 m/s. Staff has used this test method on currently available AIM systems that use electrical sensing to detect finger contact and injury mitigation after contact. The test method may work if a system were designed using visual tracking, or other means of detection, to mitigate injury after detection. However, the test probe used to test AIM systems based on other methods of detection should have the appropriate properties to trigger the system.

CPSC staff tested a SawStop JSS–MCA jobsite table saw and a Bosch REAXX™ jobsite table saw for AIM technology performance in accordance with the above test protocol. Both saws have 10-inch diameter blades, and the manufacturer's blades were used in all test runs. Staff ran tests with the probe connected to the HBN which was connected to the table saw's ground wire. Staff tested 11 HBN settings/configurations to represent the effect of mutual capacitance between the human body and its surroundings that increases the capacitance of the human body beyond its minimum self-capacitance of 50 pF in 50 pF steps up to 500 pF plus an additional short circuit test.[53] The HBN settings reflect a stepped increase in increments of 50 pF to cover a reasonable range of body capacitance. CPSC staff tested both table saws with 11 test probe activations at an approach rate of 1 m/s, and determined the probe depth of cut for each test run. For all capacitance values, both the SawStop and Bosch table saws produced cuts that were under the 3.5 mm threshold for allowable depth of cut into the probe. The depth of cut for the SawStop table saw tests ranged from 1.5 mm to 2.8 mm and the depth of cut for the Bosch table saw tests ranged from 1.9 mm to 2.5 mm.

CPSC staff's test results indicate that table saws with AIM systems that rely on electrical detection were able to mitigate injury to a test probe, approaching toward the center of the rotating saw blade at a rate of 1 m/s, upon contact with the blade by limiting the depth of cut to 1.5 mm to 2.8 mm. These table saws limited the depth of cut well below the 3.5 mm threshold between a simple and complex laceration in a human finger, as measured by the test probe.

B. Proposed Requirement

CPSC staff's testing of the current AIM technology available on table saws in the U.S. market demonstrates that blade-contact injuries on table saws would be reduced if table saw manufacturers are required to meet a performance requirement for table saws that limits the depth of cut to the specified test probe, upon making contact with the

[50] Gass, S. (2012). Comments and Information Responsive to the ANPR for Table Saw Blade-contact injuries by SawStop, LLC. *https://www.regulations.gov/document?D=CPSC-2011-0074-1106.*

[51] *UL Research Report,* 2014, *supra* note 26 at 22.

[52] *Id.* at 5.

[53] The units for electrical capacitance is the farad (F). For most applications, the capacitance value is very small so the picofarad (pF) is used to denote one trillionth (10^{-12}) of a farad.

saw blade at an approach rate of 1.0 m/s, to 3.5 mm. The proposed rule would require a test probe to act as surrogate for the human body/finger contact with the saw blade and to allow accurate measurement of the depth of cut.

Although the test probe and test method described in TAB A of the staff briefing package, are appropriate for the evaluation of AIM systems using an electrical detection system, other test probes and test methods using a different detection system may be developed to detect human body/finger contact with the saw blade and to measure depth of cut. There are many possible methods to detect human contact with a saw blade that range from electrical, optical, thermal, electromagnetic, to ultrasound and others. For example, a detection system could be developed that uses thermal sensing properties of the human body/finger or visual sensing and tracking of the human body/finger. The Commission believes that AIM systems using a different detection approach than what is currently on the market may be developed, based on sound material science and engineering knowledge.

Likewise, there are many different methods to limit the depth of cut to a probe. SawStop removes the blade from contact with the finger by stopping the blade and allowing angular momentum to retract the blade. The Bosch REAXX™ retracts the blade with an explosive discharge. Other ways of retracting the blade could include pneumatic (using high pressure air), or hydraulic (high pressure oil) systems. Another method to minimize blade contact could involve moving the finger or hand away from the blade by projecting the blade away from the hand or projecting the table upwards rather than retracting the blade. The Commission seeks comments on the feasibility of developing new AIM technology on table saws and whether different detection methods may be applied as part of an AIM system.

The proposed rule would establish a performance requirement, but it does not dictate how table saw manufacturers would meet those requirements. Rather, firms would have the flexibility to determine the appropriate technology to meet the specified performance requirement. In the staff's briefing package, CPSC staff has explained the test procedure and equipment that staff would use to assess compliance with an AIM system that uses electrical sensing technology. However, manufacturers need not use this particular test procedure, so long as the test method they use effectively assesses compliance with the standard.

The Commission is aware that, currently, there are only two AIMs systems currently capable of mitigating a blade-contact injury, those used by SawStop and Bosch REAXX™, which operate by sensing electrical properties of the human body/finger and then retracting the blade. Although the Commission believes that new AIM technologies can be developed in addition to the existing AIM technologies to meet the performance requirements, if such new technologies cannot be developed, the Commission has considered the economic impacts on manufacturers who may be required to license the existing technologies. That discussion appears in section XI of the preamble and in TAB C of the staff briefing package.

VIII. Stockpiling

In accordance with Section 9 of CPSA, the proposed rule contains a provision that would prohibit a manufacturer from ''stockpiling,'' or substantially increasing the manufacture or importation of noncomplying table saws between the date that the proposed rule may be promulgated as a final rule and the final rule's effective date. The proposed rule would prohibit the manufacture or importation of noncomplying table saws in any period of 12 consecutive months between the date of promulgation of the final rule and the effective date, at a rate that is greater than 120% of the rate at which they manufactured or imported table saws during the base period for the manufacturer. The base period is any period of 365 consecutive days, chosen by the manufacturer or importer, in the 5-year period immediately preceding promulgation of the rule.

Assuming a promulgation date in 2018, the sales period from 2013–2017 (shipments were 600,000 in 2013 and 625,000 in 2014) would allow manufacturers to produce more than 720,000 saws (600,000 ×120 percent), assuming sales in years 2015 to 2017 are stable. In the longer term of 2002 to 2014, annual shipments averaged 675,000 table saws. The stockpiling limit would thus allow the industry to meet any foreseeable increase in the demand for table saws without allowing large quantities of table saws to be stockpiled.

IX. Response to Comments

In this section, we describe and respond to comments to the table saw ANPR. We present a summary of comments by topic, followed by the Commission's response. The Commission received over 1,600 comments in response to the ANPR. The comments can be viewed on *www.regulations.gov* by searching under the docket number of the ANPR, CPSC–2011–0074. Approximately 134 commenters supported developing regulatory standards for table saws. The other commenters generally opposed the rulemaking proceeding. These comments are addressed below.

A. Mandatory Standard Would Create Monopoly

Comment: Numerous commenters stated that table saw performance requirements that mitigate blade-contact injuries would force all manufacturers to use the SawStop patented technology. Many commenters stated that mandating the use of the SawStop technology will result in a monopoly and stifle innovation, granting an unfair advantage to one company. Commenters stated that table saw performance requirements would be ''a design standard'' because SawStop's parent company (SD3, LLC) owns a number of U.S. patents for sensing technology and blade braking and blade retracting technology. Some commenters stated that if the CPSC did not mandate a particular technology, other companies could introduce their own safety technologies, some of which may prove to be better than SawStop's technology. Some commenters predicted that if CPSC did not mandate the SawStop AIM technology, other injury mitigation technologies would be developed and the competition among the technologies would eventually bring down the prices associated with these new technologies.

Response: The proposed performance requirements would not require manufacturers to use the SawStop patented technology. The proposed rule does not mandate a particular detection method or test method to mitigate blade-contact injury. The proposed performance requirement for table saws limits the depth of cut to a test probe, upon making contact with the saw blade at a radial approach rate of 1.0 m/s, to 3.5 mm. Any test probe that is used must act as a surrogate for a human body/finger to ensure that the depth of the cut can be measured properly upon contact with the saw blade. There are many methods to detect human contact with a saw blade that range from electrical, optical, thermal, electromagnetic, to ultrasound and others. Likewise, there are many methods to limit the depth of cut to a probe that would not require retraction of the saw blade. Although all of these different systems do not yet exist, such AIM systems may be developed.

Although the proposed rule does not require a particular AIM technology, the Commission is aware that, currently, there are only two AIMs systems capable of mitigating a blade-contact injury, those used by SawStop and Bosch REAXX™. Both of these systems operate by sensing electrical properties of the human body/finger and limiting the depth of cut by retraction of the blade.

The Commission is also aware of ongoing litigation between SawStop and other table saw manufacturers, including Bosch. For example, on July 16, 2015, SawStop filed a complaint against Bosch at the ITC, requesting an investigation under section 337 of the Tariff Act of 1930, to limit entry into the United States of the Bosch REAXX™ table saws that allegedly infringed on several SawStop patents. *In the Matter of Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof,* Investigation No. 337–TA–965. The status of litigation between Bosch and SawStop is ongoing and has not been resolved. We note that some of the allegedly infringed upon patents may expire in 2020, and 2022, which may resolve the patent issues in the ITC investigation. However, we do not know what other SawStop patents may be impacted by companies that attempt alternative AIM technologies, nor do we know the expiration dates of the other existing SawStop patents given that SawStop filed more than 100 patents with the U.S. Patent and Trademark Office related to SawStop's woodworking safety systems. Therefore, it is possible that any injury mitigation system on a table saw that relies on sensing electrical properties, or other properties of the human body and finger, and engages a reaction system may potentially infringe on a SawStop patent.[54]

The outcome of ongoing lawsuits involving the SawStop technology will determine some of the impacts that may result from a mandatory rule requiring AIM technology for table saws. If the courts determine that the patents covering the SawStop technology allow for companies to manufacture their own saws with alternative AIM technologies (such as the Bosch REAXX™ saw), then some manufacturers may choose to try to develop their own proprietary technology or license the Bosch technology (if available) as an alternative to the SawStop technology.

Alternatively, if the courts decide that other technologies do, in fact, infringe upon SawStop patents, then SawStop may effectively have a monopoly on the technology needed to comply with a mandatory rule, until SawStop's patents expire. However, even if the patents expire, if new AIM technology is not developed, other manufacturers likely would be required to work with SawStop and/or Bosch to license the SawStop or Bosch technologies for use in their saws. Even if all of the relevant patents eventually become public, many manufacturers may not be able to develop their own AIM system, and will either have to license the technology or exit the table saw market. As discussed in section XI of the preamble and in TAB C of the staff briefing package, the level at which the royalty payments are set will play a significant role in determining the economic impacts that CPSC's rule could have on table saw manufacturers.

B. Voluntary Standard Process

1. *Comment:* Numerous commenters stated that CPSC staff should work with the table saw industry to offer solutions. The commenters stated that the voluntary standards process is working and has resulted in the addition of a permanent riving knife on all table saws. In addition, other commenters stated that the industry has also required the modular blade guard on all table saws, which has improved the safety of table saws.

Numerous commenters also stated that current table saws (some referring to older table saws with traditional blade guards, and some referring to newer table saws with riving knives and modular blade guards) are safe, if used properly. Many commenters cited their own personal experiences with table saw use and claimed that because they have not had an injury this proves that current table saws are safe.

Response: CPSC staff performed a trend analysis of the annual estimated number of emergency department-treated table saw blade-contact injuries from 2004 to 2015. This trend analysis includes the timespan before the voluntary standard required riving knives and modular blade guards on table saws (2004 to 2009) and the timespan after the requirements were implemented (2010 to 2015). Staff's review shows that there is no discernible change in the number of injuries or types of injuries related to table saws from 2004 to 2015. CPSC staff then analyzed the risk of blade-contact injury per 10,000 table saws in use for each year in the analysis. CPSC staff performed a trend analysis on the risk of blade-contact injuries and found that there is no discernible change in the risk of blade-contact injury associated with table saws from 2004 to 2015.

In addition, staff is aware of at least 11 incidents from the CPSRMS database (2004–2015) that involve table saws that meet the current voluntary standard requirements for a riving knife and modular blade guard. A riving knife may reduce the occurrence of kickback (that can lead to unexpected stock movement and finger/hand contact with the blade) on a table saw, but kickback can still occur on table saws equipped with a riving knife. Furthermore, reducing kickback will not eliminate blade-contact injuries because blade-contact injuries can occur without kickback of the stock.

The new modular blade guard system is a significant improvement over the old guard design; however, the effectiveness of any blade guard system depends upon an operator's willingness to use it. Results of the modular blade guard survey in 2015 of table saw owners with modular blade guards indicate that a majority of respondents (80%) reported that there are circumstances that require the blade guard to be removed and a majority of respondents removed the blade guard ''sometimes'' (28%), ''often'' (17%) or ''always'' (14%).[55] The results of the user survey demonstrate that removal of the blade guard is a necessary and proper action when making certain cuts on table saws. In addition, many users choose not to use the modular blade guard at all or only some of the time. Any situation where the blade guard is not used eliminates the effectiveness of the blade guard in preventing blade-contact injuries.

Based on the trend analysis of blade-contact injuries and risk of blade-contact injuries from 2004 to 2015, the CPSRMS incidents, and staff's review of responses to the modular blade guard survey, the Commission does not see evidence that the voluntary standard requirements have reduced or changed blade-contact injuries on table saws. In addition, CPSC staff has participated with the table saw industry and other stakeholders in UL working groups since September 2011 to develop safety standards for table saws. UL proposed AIM system performance requirements for table saws in February 2015 and February 2016, which indicates that the voluntary standards governing body believes that table saws should exhibit

[54] SawStop has also filed antitrust claims alleging that several major table saws manufacturers conspired to boycott SawStop's safety technology and manipulate safety standards. *See SawStop LLC* v. *Black & Decker, et. al,* 801 F.3d 412 (4th Cir. 2015); *SawStop LLC* v. *Black & Decker, et. al,* CV No. 1:14-cv-00191, 2016 WL 6093488 (E.D.Va. Oct. 18, 2016).

[55] Sherehiy, B. and Nooraddini, I. (2016), *supra* note 11.

active injury mitigation performance. However, despite these efforts, the AIM requirements have not been adopted in the UL standard. Therefore, the Commission believes that the voluntary standard activities have not been effective at addressing blade-contact injuries on table saws.

C. Consumer Choice

1. Comment: Numerous commenters stated that table saw users should be responsible for their actions, should use common sense when operating the table saw, and should accept the risk of using a table saw. Many commenters stated that SawStop table saws are already available and the free market system should determine whether or not consumers will purchase a table saw with enhanced safety features. Many of these same commenters opposed any mandate from the federal government to make table saws safer. These commenters contended that the federal government should not regulate consumer choice or behavior. Many commenters stated that other products can also cause injury such as knives or band saws and ask if the CPSC will regulate those products as well. Other commenters argued that lawsuits against table saw manufacturers reward users who are irresponsible and use table saws improperly.

Response: CPSC staff's analysis of blade contact incidents indicates that there are many scenarios in which an operator's finger/hand can contact a table saw blade, and there are certain cuts on table saws that require removal of the blade guard. Therefore, an operator's decision to use a table saw without all safety devices does not necessarily indicate intentional neglect or ignorance on the part of the operator. Sudden movement of the workpiece from kickback can cause the operator to lose control of the workpiece and cause his/her hand to fall into or be ''pulled'' into the blade. Hand/finger contact is also possible without kickback, in situations where the operator's hand gets too close to the blade while feeding the workpiece or the operator is distracted and inadvertently contacts the saw blade. In addition, many of the scenarios leading to blade contact may be more likely if the consumer is tired or if the view of the blade, or cut, is impaired in some way.

An estimated 4,700 amputations related to table saws occur each year. When compared to all other types of consumer products, an estimated 18.6 percent of all amputations in the NEISS in 2015 are related to table saws. When compared to all other workshop products, table saws accounted for an estimated 52.4 percent of all amputations related to workshop products in 2015. Based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the risk of injuries associated with blade contact on table saws.

2. Comment: Many commenters supported preserving consumer choice in the table saw market by not mandating AIM technology. Most wanted table saws equipped with AIM technology to be available, and some even stated that they owned a SawStop saw; however, they wanted to preserve the option to purchase less expensive table saws not equipped with an AIM technology. Many commenters stated that the consumer should decide whether table saws equipped with AIM technology are worth the increased cost. Some commenters stated that there are already safety devices, such as splitters, blade guards, and push sticks, which if used properly, will reduce injuries; and therefore, consumers who properly use these devices should not be forced to pay more for saws with AIM technology. Some commenters requested that manufacturers be required to offer at least one table saw with AIM technology, instead of requiring all table saws to be equipped with the technology. Other commenters noted that saws equipped with AIM technology are already available in the marketplace and if consumers wanted these saws, they could purchase them.

Response: We acknowledge that, although some consumers would prefer table saws with the AIM technology, other consumers would prefer to have the option to purchase a table saw without the AIM technology. In addition, some consumers may also prefer the use of passive table saw safety devices, as opposed to the AIM technology. However, the Commission believes that while the proposed rule would prevent consumers from purchasing table saws without some type of AIM technology, the proposed requirement would also substantially reduce the serious b blade-contact injuries involving table saws every year. In addressing the blade contact risk, the Commission must weigh the costs of blade-contact injuries against the cost of limiting consumer choice and the rule's potential effect on the utility, cost, and product availability to consumers.

As discussed in section XI of the preamble and in TAB C of the staff briefing package, the Commission considered the costs and benefits of proposing the rule. Based on estimates from NEISS and the CPSC's Injury Cost Model (ICM), the proposed rule would address an estimated 54,800 medically treated blade-contact injuries annually. The societal costs of these injuries (in 2014 dollars and using a 3 percent discount rate) amounted to about $4.06 billion in 2015. Amputations accounted for about 14 percent of the medically treated blade-contact injuries but almost two-thirds of the injury costs. Overall, medical costs and work losses account for about 30 percent of these costs, or about $1.2 billion. The intangible costs associated with pain and suffering account for the remaining 70 percent of injury costs. Because of the substantial societal costs attributable to blade-contact injuries, and the expected high rate of effectiveness of the proposed requirement in preventing blade-contact injuries, the estimated net benefits (*i.e.,* benefits minus costs) for the market as a whole averaged $1,500 to $4,000 per saw. Aggregate net benefits on an annual basis could amount to about $625 million to about $2,300 million.

However, the Commission also considered alternatives to the rule, including no regulatory action, deferring to the voluntary standard, later effective dates, exempting certain classes or types of table saws, and information and education campaigns. These alternatives are discussed in detail in section XI.J. of the preamble and TAB C of the staff briefing package. The Commission determined preliminarily that the various alternatives would not greatly reduce the number of blade-contact injuries that would be addressed by the proposed rule. Based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws. However, the Commission seeks comment on various alternatives that would not require all table saws to be produced with the AIM technology.

D. Table Saw Incident Data Analysis

1. Comment: Numerous commenters stated that CPSC staff injury data analysis was faulty because it did not include the effects of the modular blade guard system. Specifically, the commenters argued that a meaningful analysis cannot be completed based on the 2007–2008 Injury Report because it includes data only related to old guard designs rather than the new modular blade guarding system. The Power Tool Industry (PTI) estimated that, in 2012, more than 900,000 table saws had been sold since 2007 that use the modular

blade guard. Some commenters stated that CPSC staff failed to estimate the risk of injury associated with table saw use, and that this data is needed to evaluate the effectiveness of the voluntary standard requirements for a riving knife and modular guard on table saws.

Response: For the proposed rule, CPSC staff estimated the yearly table saw blade-contact injuries from 2004 to 2015 by using estimates from NEISS. The date range for the trend analysis includes a timespan before the voluntary standard required table saws to be equipped with a riving knife and modular blade guard (2004 to 2009) and a timespan after the voluntary standard requirements became effective on most table saws (2010 to 2015). A proportion of table saws manufactured before the current voluntary standard became effective is expected to remain in use throughout this whole period. However, in more recent years, after the current voluntary standard became effective, an increasing proportion of table saws in use conforms to the current voluntary standard. Thus, if the voluntary standard was positively impacting the number or severity of injuries, there would be a steady decrease in the number of injuries or severity of injuries as the proportion of compliant table saws increased. However, the data reviewed by CPSC staff do not indicate that requirements in the voluntary standard have had any impact in reducing the number or severity of blade-contact injuries on table saws.

CPSC staff performed trend analyses for blade-contact injuries, as well as blade contact amputations, hospitalizations, and finger/hand injuries from 2004 to 2015. CPSC staff concludes that there is no discernible change in the number of blade-contact injuries or types of injuries related to table saw blade contact from 2004 to 2015. CPSC staff also performed a trend analysis for the risk of blade-contact injury per 10,000 table saws and, likewise, concludes that there is no discernible change in the risk of injury associated with table saws from 2004 to 2015.

CPSC staff has also reviewed incidents reported through means other than the NEISS, which are entered in the CPSC's CPSRMS database. Of the 53 incidents identified in the CPSRMS database that were reported in the period from 2004 to 2015, 36 involved table saws with a traditional blade guard and 11 involved table saws with a modular blade guard. A review of the reports indicates that the incident scenarios for table saws with modular blade guards are similar to incidents involving table saws with traditional blade guards in terms of their use with and without blade guards and accidents occurring with and without unexpected stock movement from kickback of the material. In addition, the modular blade guard survey conducted by the CPSC in 2015 indicates that consumers frequently remove the modular blade guard to perform certain cuts, or do not use the modular blade guard at all or only some of the time.

Based on the trend analysis of blade-contact injuries and risk of blade-contact injuries dating from 2004 to 2015 conducted by staff, plus anecdotal evidence from CPSRMS that blade-contact injuries continue to occur on table saws that meet the current voluntary standards requirements, and results from the modular blade guard survey, the Commission does not see evidence that the voluntary standard requirements for riving knives or modular blade guards have reduced or mitigated blade-contact injuries on table saws. Accordingly, the Commission believes that the proposed performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries associated with table saws.

2. Comment: One commenter questioned the results of the 2007–2008 NEISS special study indicating that 68.7 percent of saws involved in incidents were fixed cabinet saws, 18.3 percent were semi-portable contractor saws, and 10.5 percent were portable bench saws. The commenter stated the results were inconsistent with other data in the survey regarding the table saws' characteristics.

Response: CPSC staff conducted a re-analysis of the saw type and drive type responses provided by the injury victims in the 2007–2008 special study and published the results of the re-analysis in June 2014. CPSC staff stated that consideration should be given to staff's finding that the distribution of injuries for different types of saws cannot be based on how respondents answered questions about the type of saw.[56] However, as discussed in section IV of the preamble, the Commission is not relying on any data used in the 2007–2008 special study for the proposed rule.

3. Comment: Several commenters stated that most table saw injuries are caused by kickback of the workpiece and the SawStop system does not prevent kickback. Others stated that riving knives will eliminate kickback and therefore reduce most injuries.

Response: Based on CPSC staff's review of the data, the Commission believes that while the proposed rule would not eliminate kickback, the proposed performance requirement would reduce injuries that occur when kickback results in blade contact. CPSC staff's analysis of blade contact incidents indicates that there are many scenarios in which an operator's finger/hand can contact a table saw blade and there are certain cuts on table saws that require removal of the blade guard. Sudden movement of the workpiece from kickback can cause the operator to lose control of the workpiece and cause his/her hand to fall into or be ''pulled'' into the blade. However, hand/finger contact is also possible without kickback when the operator's hand gets too close to the blade while feeding the workpiece, or when the operator is distracted and inadvertently contacts the saw blade.

CPSC staff identified 53 incidents in the CPSRMS database that involve blade-contact injury on a table saw that occurred between January 1, 2004 and December 31, 2015, and were reported to CPSC by March 1, 2016. For the majority of incidents, it is unknown whether unexpected workpiece movement was involved in the blade contact. However, of the incidents where information about the contribution of workpiece movement was known, most blade-contact injuries involved some type of unexpected workpiece movement. In addition, 11 of the 53 incidents involved table saws that meet the current voluntary standard requirements for a riving knife and modular blade guard. CPSC staff believes that the data show that blade-contact injuries continue to occur on table saws equipped with a riving knife and modular blade guard.

4. Comment: One commenter claimed that the full NEISS sample overestimated the number of table saw blade-contact injuries in 2007–2008 based on estimates from the National Electronic Injury Surveillance System—All Injury Program (NEISS–AIP). More specifically, the commenter argued that because the proportion of NEISS–AIP amputations (52%) treated in hospital emergency department(s) (ED) was statistically less than the proportion of ED amputations from the full NEISS estimate, NEISS–AIP is the appropriate and preferable sample to use when making national estimates of table saw ED injuries.

Response: In the proposed rule, CPSC staff has reviewed updated incident data based on estimates from NEISS hospital

[56] See *http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/Home%20Maintenance%20and%20Construction/CoverpageandMemoofStaffAnalysisofTableSawTypeinNEISSSpecialStudy.pdf.*

records for injuries related to product code 0841 (table or bench saws) for 2015. For the ANPR, staff's estimate of ED-treated blade-contact injuries for table saws, including the estimate of ED-treated amputations, was based on the weighted national estimate of actual blade-contact injuries reported through the full NEISS sample of hospitals during 2007–2008. NEISS is a stratified national probability sample of approximately 100 U.S. hospital EDs that allows the CPSC to make statistically valid national estimates of product-related injuries treated in U.S. hospital EDs. The NEISS–AIP is a statistical subsample of the full NEISS sample that is administered by the CDC and consists of approximately two-thirds of the NEISS hospitals in each stratum. This subsample collects information on injuries outside CPSC's jurisdiction, including occupational, motor vehicle, boating, and other injuries.

For table saw injuries (product code = 0841) in 2007–2008, approximately 62 percent of the weighted national estimate comes from the hospitals in the NEISS–AIP subsample. Although the commenter estimated that amputations from the NEISS–AIP subsample accounted for only about 52 percent of amputations from the total NEISS sample and reported that the difference was statistically significant, contrary to the commenter's assertions, the proportion of amputations coming from NEISS–AIP was not, in fact, statistically different than the overall national estimate of table saw injuries that came from the full NEISS sample.

E. Economic Issues

1. Comment: One commenter stated that CPSC staff gives no basis for projecting injury estimates derived from NEISS onto other medically treated injuries to obtain a national injury rate for table saws. The commenter noted that other estimates of table saw-related injuries differ from CPSC's; using the NIOSH hospital sample, the average total number of work-related injuries treated in hospital emergency rooms for table saws was below the CPSC estimate. The commenter asserted that, to the extent that more serious injuries are likely to be treated in emergency rooms, the mix of injury severity based on the NEISS data overstates the severity mix once the injury total is multiplied by a set factor.

Response: The CPSC staff uses the CPSC's ICM to project the number of medically treated injuries treated outside of hospital emergency departments (*e.g.,* non-ED office visits, including medical treatment in doctor's offices, emergency clinics, ambulatory care centers, etc.).[57] As described more fully in section XI of the preamble and TAB C of the staff briefing package, estimates were derived from empirical relationships between ED-treated injuries and injuries treated in other settings, based on National Health Interview Survey records (which provided detailed information on where the injuries were treated) stretching over 10 years.

The estimate of occupational table saw injuries treated in hospital EDs is not relevant for the table saw analysis. The CPSC excludes occupational injuries from the CPSC estimate of consumer injuries whenever possible. Moreover, the NIOSH estimates mentioned by the commenter were not based on a ''NIOSH hospital sample.'' Rather they were based on the NEISS–AIP, a subsample of NEISS hospitals administered by the CDC. The AIP subsample covers a much broader range of injuries, *i.e.* occupational, motor vehicle, boating and other injuries, in addition to injuries that are consumer product related, so the number of records collected is much higher for the AIP subsample. Thus, the results for the CPSC estimate of consumer injuries and the NIOSH estimate of occupational injuries are not inconsistent.

Finally, the mix of injury severities from the NEISS ED injury sample was not simply projected onto the estimate of injuries treated outside of hospital EDs. Rather, the estimates were based on the characteristics of injuries and victims treated outside of hospital EDs. For example, based on information from the National Health Interview Survey, a 40-year-old woman is almost twice as likely to be treated in a doctor's office (or some other non-ED settings) with a fractured clavicle than would a 10-year-old boy.[58] Consequently, for this example, the ICM would estimate more injuries treated outside the emergency room for 40-year-old women and fewer injuries treated outside of hospital EDs for 10-year-old boys. The more serious and life threatening injuries are more likely to be treated in hospital emergency rooms, and this is reflected in the CPSC injury estimates.

2. Comment: Two commenters focused on several aspects of the economic value of injury risks used by the CPSC in its 2011 analysis. One commenter suggested that the CPSC did not provide any supporting data for any of the four cost components of the ICM: Medical treatment, lost time from work, product liability costs, and pain and suffering. The commenter suggested that counting product liability costs as well as pain and suffering may lead to double counting. Furthermore, the commenter asserted that the appropriate method for assessing the benefits from public programs is society's willingness to pay to avert small risks, an *ex ante* amount, as opposed to a retrospective piecemeal approach adopted by the CPSC. Finally, this commenter noted that even if jury awards for pain and suffering corresponded to willingness to pay values, there is no justification for applying these rates to all table saw injuries. Another commenter stated that the pain and suffering portion of the ICM injury cost estimates are overstated and inappropriate.

Response: The methodology and data supporting the various components in the ICM are described in section XI of the preamble and in TAB C of the staff briefing package. The societal costs of blade-contact injuries represent the pool from which the benefits of a blade contact rule are derived. The societal costs of these injuries are quantified with the ICM. The ICM is fully integrated with NEISS, and, in addition to providing estimates of the societal costs of injuries reported through NEISS, it also estimates the costs of medically treated injuries that are treated outside of hospital EDs. The major aggregated societal cost components provided by the ICM include medical costs, work losses, and the intangible costs associated with lost quality of life or pain and suffering. In recent years, CPSC staff has excluded the product liability costs from ICM cost estimates. Although this component was intended to represent the costs of administering the product liability system in the United States, there was the possibility of some double counting, as suggested by the commenter. Accordingly, product liability costs administration costs are not included in the proposed rule.

The commenter also promotes the concept of willingness-to-pay over the method used by CPSC staff to estimate the likely benefits of regulation. CPSC does use willingness-to-pay estimates in valuing fatal injuries. However, such estimates do not generally exist for

[57] Miller, Lawrence, Jensen, Waehrer, Spicer, Lestina, Cohen, *The Consumer Product Safety Commission's Revised Injury Cost Model* (Dec. 2000), available at: *https://www.cpsc.gov/PageFiles/100269/costmodept1.PDF.* Since the table saw ANPR was published, the methodology for projecting the number of non-ED-treated injuries has been updated. It is described in: *Revised Incidence Estimates for Non-Fatal, Non-Hospitalized Consumer Product Injuries Treated Outside Emergency Departments,* Bruce Lawrence, Pacific Institute for Research and Evaluation, Calverton, MD, (April 2013).

[58] Miller et al., 2000, *supra* note 57, Table 6.

nonfatal injuries, such as blade-contact injuries on table saws.

3. Comment: One commenter asserted that the injury data used by CPSC's staff to estimate societal costs in its 2011 analysis were based on extrapolations that were imprecise and resulted in greatly overstated societal costs. The commenter based this statement on two factors. First, the commenter asserted that injury costs should be limited to blade-contact injuries reported through hospital emergency rooms. Second, because only about 11 percent of ED-treated injuries resulted in hospitalization, the commenter suggested that inclusion of the ED-treated and released injuries greatly exaggerated the CPSC estimate of societal costs.

Response: CPSC staff uses the ICM to project the number of medically treated injuries treated outside of hospital emergency departments, and the costs of those injuries. Estimates were derived from empirical relationships between ED-treated injuries and injuries treated in other settings, and based on National Health Interview Survey records (which provided detailed information on where the injuries were treated) stretching over 10 years.[59] Cost estimates for the injuries treated outside of hospital emergency departments are generally less than the costs of injuries initially treated in emergency rooms. To exclude injuries treated outside of hospital emergency departments would severely underestimate the types and costs of injuries associated with table saw use.

Moreover, while it is true that costs associated with injuries that were treated and released from emergency departments are substantially less than hospitalized injuries, the costs associated with treated and released injuries can still be substantial. To exclude the treated and released injuries, which typically account for about 90 percent to 95 percent of table saw injuries presenting at hospital EDs, would substantially underestimate the cost of table saw injuries.

4. Comment: One commenter asserted that the methodology CPSC uses to extrapolate from ED-treated injuries to all medically treated injuries does not acknowledge that table saw injuries are likely to be more serious, and thus, more likely to require treatment in a hospital ED, than injuries involving fingers, wrists, hands, and lower arms that are associated with other consumer products. Accordingly, the commenter contended that the ICM overstates the annual number of blade-contact injuries treated during non-ED office visits. The commenter suggested that this purported error would be corrected by reducing CPSC's estimate of non-ED office visits (based on ratios involving rates of hospitalization). The commenter concluded that there were about 42,800 medically attended blade-contact injuries involving table saws annually during 2007–2008, about 36 percent less than CPSC's estimate of 67,300.

Response: CPSC staff's review of 2015 data, based on estimates from NEISS and the CPSC's ICM, shows that the draft proposed rule would address an estimated 54,800 medically treated blade-contact injuries annually. As described in more detail in section XI of the preamble, and TAB C of the staff briefing package, the ICM uses empirically derived relationships between ED-treated injuries and injuries treated in other settings to estimate the number of injuries treated outside of hospital EDs. The methodology does not use a single 1 to 1 extrapolation factor, as suggested by the commenter. Nor does it estimate non-ED table saw blade-contact injuries by assuming ''that the average injury severity (and thus the likelihood of seeking ED treatment) is comparable to that for other types of products,'' as suggested by the commenter. Rather, based on national survey data from the National Health Interview Survey, the ICM uses information on the age, sex, diagnosis (*e.g.,* fracture, amputation), body part, and injury disposition to estimate injuries treated in non-ED settings. For example, according to national survey data (from the National Health Interview Survey), a 40-year-old woman is almost twice as likely to go to a doctor's office, an emergency clinic, or some other non-ED office setting with a fractured clavicle as a 10-year-old boy. Consequently, as suggested by this example, the ICM estimates more injuries treated outside the emergency room for certain combinations of injury and victim characteristics. For other types of injuries, a greater proportion would be treated in hospital emergency rooms.

The ICM uses a classification tree that takes into account age, gender, body part, and injury diagnosis in determining the ratios of non-ED office visits to ED-treated injuries. Thus, for example, estimates of non-ED doctor-treated finger amputations involving table saws are not product specific, but rather, are based on general ratios of finger amputations involving all consumer products in each of the medical treatment settings (*i.e.,* the ratio of finger amputations treated in the EDs to amputations treated in non-ED office visits), with adjustments for the other factors noted above. At the time of the ANPR, these estimates were based on an analysis of 10 years of data from the National Health Interview Survey (NHIS, 1987 to 1996) which provided information on the proportion of finger amputations initially treated in the ED relative to the proportion of finger amputations initially treated outside of the ED during non-ED office visits. The current version of the ICM uses data from the 1996–2007 Medical Expenditure Panel Survey (MEPS) using the same classification tree methodology to estimate the proportion of injuries treated outside the ED.[60]

The hospital admitted injuries that the commenter discussed are used by the ICM only to estimate the injuries that bypass the emergency room and are admitted directly to the hospital. Injuries that bypass the ED, but result in hospitalization would, for example, include cases in which an injury is initially treated in a doctor's office, but the doctor decides that the victim should be hospitalized immediately. One medical facility, the Maryland Institute for Emergency Medical Services Systems (MIEMSS) also directly admits trauma victims. The ratio used for estimating these direct admissions was computed with data from the National Ambulatory Medical Care Survey and the National Hospital Discharge Survey.[61]

The commenter points out that, when compared to injuries involving other products, a higher proportion of table saw blade-contact injuries that are treated initially in hospital EDs result in hospital admission. Based on NEISS estimates, this statement is correct. It may also suggest that, relative to other product-related hazards, a higher proportion of blade-contact injuries is likely to be treated initially in hospital EDs as opposed to non-ED settings (a conclusion that is fully consistent with the staff's ICM estimates of table saw blade-contact injuries). However, this conclusion is not sufficient to allow us to quantify directly the proportion of blade-contact injuries treated outside the ED. Nor does it imply, by itself, that the ICM has overestimated the number of table saw injuries initially treated in non-ED office visits or that the number of injuries treated outside of hospital

[59] Miller *et al.,* 2000, *supra* note 57.

[60] Lawrence, 2013, *supra* note 57.

[61] Since the ANPR was published, the methodology for projecting the number of admitted injuries bypassing the emergency room has been updated and is described in Bhattachara, S., Lawrence, B., Miller, T.R., Zaloshnja, E., Jones, P.R., *Ratios for Computing Medically Treated Injury Incidence and Its Standard Error from NEISS Data* (Contract CPSC–D–05–0006, Task Order 8). Calverton, MD: Pacific Institute for Research and Evaluation, (Aug. 2012).

EDs should be lowered. The ICM bases estimates of non-ED office visits on 10 years of NHIS data showing the relationship between injuries treated in the ED and injuries treated elsewhere.

To estimate the number of injuries treated in non-ED settings, the commenter applied diagnosis-specific ratios of the hospitalization rate for table saw injuries to the hospitalization rate for other products. However, this appears to be an *ad hoc* procedure for reducing non-ED office visits (which the commenter had already concluded, without supporting data, to be too high). Moreover, the commenter presented no empirical basis for estimating (or reducing) the number of injuries treated in non-ED office visits based solely on information from ratios of hospitalized injuries. While the severity of an injury may affect where an injury is treated, the number of table saw injuries treated in doctors' offices cannot be determined directly and solely from estimates of injuries that are hospital admitted.

5. Comment: One commenter stated that the approach CPSC uses to value the intangible costs of injuries is based on estimates from an unrepresentative sample of jury awards and settlements involving unrelated products, motor vehicles, and premises liability. Moreover, the commenter stated that inflators used to ''roll-forward'' older ICM model values to estimate 2008 dollar costs produce much higher unit cost estimates than if reasonable alternative methods were used to adjust for changes in prices and wages over time.

Response: CPSC staff's evaluation of the intangible cost estimates in the ICM in the proposed rule is based on 2014 dollars and the methodology for the injury cost estimates has changed since the ANPR was issued. Using regression analysis allowed CPSC staff to adjust the pain and suffering awards by a number of relevant factors, including the injury diagnosis and body part affected, the sex of the victim, and the medical costs and work losses resulting from the injury. This process allowed the staff to provide specialized estimates of the intangible costs based on the characteristics of the injury. Additionally, because some of the awards involved motor vehicles and premises liability, the regression analysis also adjusted for these factors to isolate and exclude their impacts from the pain and suffering estimates attributable to consumer products.

Although the commenter criticizes the jury verdict methodology for estimating lost quality of life, and presents alternative valuations based on reductions in quality-adjusted life years, if these estimates are adjusted using indices that reflect actual changes in price levels, rather than changes in the ''real wage cost'' (RWC) used by the commenter, then the estimates of costs associated with the lost quality of life would result in costs per table saw injury that are comparable to, or higher than, CPSC's estimates.

The commenter's approach for inflating non-medical costs for changes in the nominal price level is not appropriate because it provides estimates of changes in real wages, but does not adjust for changes in the price level. (The change in the RWC index is computed by dividing the changes in wages by the CPI-All Items index, and measures changes over and above inflation.) As a consequence, the commenter's approach using the RWC to inflate non-medical costs substantially underestimates the actual change in the nominal price level.

6. Comment: One commenter suggested that the tangible and intangible societal costs associated with table saw blade-contact injuries amounted to about $1.39 billion, less than 60 percent of the CPSC societal cost estimate of $2.36 billion used by CPSC staff in its 2011 analysis.

Response: The commenter's two adjustments to the table saw blade-contact injury estimates are the principal reason for the difference between the commenter's estimates of injury costs and the ANPR estimates. First, the commenter's use of the NEISS–AIP subsample proportions to adjust the estimate for non-admitted injuries, has no statistical justification. Second, the commenter's assertions that the CPSC underestimated the proportion of table saw injuries that were treated in a hospital setting (and hence the CPSC's estimate of other medically attended injuries is over estimated) is not supported by any empirical data. These two issues are discussed in greater detail in the responses to comments above. In contrast, CPSC's analysis is based on 10 years of the National Health Interview Survey which was used to calculate the ratios between injuries treated and released from the emergency department and those treated in doctors' offices and clinics. Correcting for these two injury adjustments would raise the commenter's cost estimate by 31.7 percent to about $1.83 billion. Additionally, correcting both injury and inflator estimates would raise the injury cost estimate to approximately $2.2 billion, roughly comparable to the $2.36 billion estimate in the ANPR. As discussed in section XI of the preamble, and TAB C of the staff briefing package, estimates of societal costs calculated for the proposed rule are substantially higher, approximately $4.06 billion in 2014 dollars, based on more recent data and analyses.

7. Comment: One commenter asserted that an economic justification for product safety regulation requires some kind of fundamental market failure. The commenter noted that in the absence of such a failure the usual assumption is that consumers will purchase products that offer the mix of characteristics and product price that best match their preferences. The major types of market failure mentioned by the commenter include: (1) Inadequate or asymmetric information about risks; (2) externalities that impose costs on non-table saw users; and (3) market power that would allow firms some control over market prices. The commenter concluded that there was no economic justification for a possible table saw rule; in other words, none of the market failures was present or was not present to such a degree as to require a regulatory fix.

Response: According to the Office of Management and Budget's (OMB) Circular A–4 (2003) [62] which provides OMB's guidance on regulatory analyses, a key element of a good regulatory analysis is a statement of the need for such a rule and a description of the problem that the rule is intended to address.[63] If improved safety is needed, and private markets have been unable to efficiently provide it, such a market failure provides an economic justification for regulatory intervention. The major types of market failure, as described in *Circular A–4,* concern (1) inadequate or asymmetric information, (2) externalities, or (3) market power. Inadequate or asymmetric information would exist when consumers underestimate or are generally unaware of the risks posed by risky products or are unable to interpret or adequately process the risk information. Externalities would exist in the market place when one party's actions impose uncompensated benefits or costs on another party. Market power would exist when firms can exercise market power to reduce output below what would be offered in a competitive industry to obtain higher prices.

Inadequate or asymmetric information. Many of the risks associated with the use of table saws, as well as the potential severity of injuries when users come into contact with a moving blade, are obvious. However, some risks associated with the use of table saws may be poorly understood by consumers, such as sudden movement

[62] See *https://www.whitehouse.gov/omb/circulars_a004_a-4.*

[63] *Id.* at 3–7.

of the workpiece from kickback which can cause the operator to lose control of the workpiece and cause his/her hand to fall into or be ''pulled'' into the blade. Saw blades are jagged and rotate rapidly, and because the blades are used to cut wood their impact on fingers or hands is readily imaginable. Table saws also come with extensive warnings and safety devices (such as blade guards, riving knives, and anti-kickback pawls) that are intended to reduce the risk of blade contact. Hence, it would be difficult to argue that the risks of table saws use are unknown or somehow hidden from the consumer.

On the other hand, it is possible that some of those injured have not been trained in proper table saw use or have not paid close attention to product warnings. Non-occupational users may use table saws only sporadically and forget or simply neglect safety procedures. Fatigue is known to have played a role in some incidents, and the risk of fatigue due to extended periods of cutting may not be obvious to all consumers. Some of those injured may be adolescents or seniors who are either undergoing cognitive development or cognitive decline and may not fully appreciate the dangers posed by table saws. This is not to suggest that users are unaware of the obvious risks. However, casual users may be unaware of how quickly and how violently an injury can occur, if, for example, a cut results in kickback. Consequently, some consumers could underestimate the actual risks they face. It also may be difficult for occasional users to interpret or process the risk information in a way that allows them to take the appropriate level of safety precautions.

Externalities. Externalities exist when one party's actions impose uncompensated benefits or costs on another party. In the case of table saws, the externalities would generally be financial. If, for example, medical treatment costs are not borne by the injured party, but rather shifted to the public at large, there is a financial externality that the purchaser may not take into account when buying or using a table saw. Based on the injury cost data reviewed by staff for the proposed rule, medical costs and lost wages amounted to roughly $160 million and $1,040 million, respectively. Some proportion of these medical costs and work losses are shifted to the public at large by means of insurance premiums and unemployment compensation.

Market Power. Market power exists when one or more firms can exert some control over the price of the product (by limiting production), or create barriers that prevent other firms from entering the market. For table saws, patents acquired by one firm (*i.e.,* SawStop) regarding their AIM technology, combined with efforts to prevent patent infringement, appear to have provided that firm with sufficient market power to exert some control over the price of the technology (by means of licensing agreements) and to limit the ability of other firms to develop and market similar technology. The emergence of a second firm (*i.e.,* Bosch) that began producing and selling a table saw model with the AIM technology in 2016 does not preclude or negate the existence of market power for one or both of these firms. Moreover, litigation over the alleged patent infringement of the second firm is ongoing.

In summary, there could be several market impediments to a more widespread adoption of the AIM system technology by table saw purchasers. These impediments are discussed further in section XI of the preamble and at TAB C of the staff briefing package.

8. Comment: Based on an evaluation of information provided in the ANPR, and the methodology used in Dr. John Graham's economic analysis of AIM technology,[64] one commenter concluded that mandating the SawStop technology for the bench-top category of table saws is not economically justifiable. Numerous other commenters also stated that the costs of regulation to increase table saw safety are not justified.

Response: The proposed rule would not mandate the SawStop technology for the table saw industry. However, the economic impact of the proposed rule, including potential royalty payments and licensing fees, is addressed in section XI of the preamble and in TAB C of the staff briefing package. Staff's review of the potential benefits and costs of the proposed rule shows that the proposed rule would address roughly 54,850 medically treated blade-contact injuries annually. The societal costs of these injuries amount to about $4.06 billion annually. Based on CPSC staff's benefit and cost estimates, the net benefits (*i.e.,* benefits minus costs) of the proposed rule would amount to an average of $1,500 to $4,000 per saw for the market as a whole.

9. Comment: Some commenters asserted that a standard mandating the AIM technology will increase the price of table saws and will make table saws unaffordable for many individuals and small businesses. Similarly, some said that mandating the AIM technology would increase the price of table saws to the point that it prohibits people from purchasing a table saw for home hobby use or for starting a small business. One commenter equated the increased cost of buying a table saw with AIM technology with having to pay for someone else's stupidity. Another commenter opposed mandating the AIM technology because requiring automatic detection and blade retraction in the case of body-contact would eliminate the sub-$1,000 saw segment.

Response: The Commission is aware that the proposed rule would be costly and would result in disruption of the table saw market. In addition, the Commission has to balance the number and severity of blade-contact injuries and the impact of the proposed rule on the product's utility, cost and availability to the consumer. While the proposed rule would substantially reduce blade-contact injuries and the societal costs associated with those injuries, CPSC staff's review showed that the impact of increasing table saw production costs on consumers also would be considerable. The prices for the least expensive bench saws now available are expected to more than double, to $300 or more. In general, the retail prices of bench saws could increase by as much as $200 to $500 per unit, and the retail prices of contractor and cabinet saws could rise by as much as $350 to $1,000 per unit. These higher prices may be mitigated in the longer run, but the extent of any future price reductions is unknown. However, given that the least expensive bench saws currently cost about $129, and the least expensive contractor saws are priced at about $529, CPSC staff expects that some bench and contractor saws will retail for under $1,000.

In addition, because of the likely decline in sales following the promulgation of a rule, consumers who choose not to purchase a new saw due to the higher price will experience a loss in utility by forgoing the use of table saws, or because they continue to use older saws which they would have preferred to replace.

There also may be some other utility impacts. The inclusion of the AIM technology may, for example, increase the weight and (potentially) the size of table saws to accommodate the new technology, to allow access to change the brake cartridge, and to mitigate the effects of the force associated with the activation of the brake cartridge. Although this factor may have a relatively small impact on the heavier and larger contractor and cabinet saws,

[64] Graham, John D., and Chang, Joice, 2014. Reducing the risk of injury from table saw use: The potential benefits and costs of automatic protection. *Risk Analysis, 35*(2) at 307–317.

the impact on some of the smaller and lighter bench saws could markedly reduce their portability.

CPSC staff found no evidence to suggest that the proposed rule will eliminate table saws from home hobby use or for starting small businesses. However, there will be significant impacts on the cost, utility and availability of table saws in the near term. In its preliminary regulatory analysis staff clearly sets out all these considerations. After careful review, the Commission has decided that issuing the proposed rule is appropriate.

10. Comment: Some commenters expressed concern about the effects of the proposed rule on small businesses, such as construction contractors, small woodworking shops, cabinet makers, and wood furniture shops. Concerns were raised about the ability of small businesses to afford new table saws and whether they would go out of business. Two commenters suggested that unemployment would increase due to these small businesses closing.

Response: As discussed in the initial regulatory flexibility analysis in section XII of the preamble, and TAB D of the staff briefing package, CPSC staff believes that the proposed rule will have an impact on small businesses. The price of table saws will increase significantly. However, staff believes that even if the increased cost of a new table saw was $800, and a firm purchased a new table saw each year, the impact on the firm is unlikely to be significant unless the firm had annual receipts of less than $80,000. Nevertheless, staff believes that it is possible that a small number of small businesses might lay off a small number of employees.

11. Comment: Some commenters stated that the SawStop technology is expensive given the cost of the cartridges and blades that would have to be replaced when the technology is triggered. One commenter noted that his blades cost about $100 each and his dado set costs about $300. The commenter expressed concern that the need to replace the cartridge when changing between saw blade and dado set would also increase the set-up time when making such transitions. Some commenters were concerned with false-positive detection with the SawStop systems, especially when cutting pressure-treated wood or metal, increasing their costs. One commenter claimed to have ''managed medium size shops where the technology probably saved a finger'' but also where ''accidental tripping of the mechanism cost thousands of dollars annually.'' Another commenter expressed some concerns about the availability of replacement cartridges and whether they would be interchangeable among different brands or models of table saws. If replacement cartridges were specific to the brand or model of table saw, it could limit the availability and add to the cost of activation.

Response: CPSC staff is aware of two table saw AIM technologies that have been developed; the first requires replacement of an activation cartridge and, almost always, the repair or replacement of the blade once the system has been activated (SawStop). The second only requires replacement of the activation cartridge after two activations (Bosch REAXX™). However, the future availability of the second system is questionable due to ongoing patent litigation. Although conductive materials or wet wood that is moist enough to conduct enough electricity could activate the AIM system and trip the safety system, both the AIM systems currently in use allow bypass of the system which can be deactivated while cutting conductive materials or wet wood. Accordingly, replacement costs would generally be incurred only if the user's hand or arm came into contact with an operating table saw blade. On average, the replacement cost for the average blade and/or cartridge is expected to amount to roughly $11 to $14 annually over the life of the saw, which would be far below the cost of a blade-contact injury that could amount to tens of thousands of dollars. CPSC staff acknowledges that if a different cartridge is required for use with a dado set, then switching between a regular blade and a dado set may require more time and expense than required in the absence of an AIM system. This may affect productivity in some shops that do a large volume of dado cuts.

12. Comment: One commenter stated that the increased cost of table saws that incorporate an AIM technology will not increase the likelihood that people will purchase table saws but it will likely reduce the demand for table saws and harm table saw manufacturers.

Response: A mandatory standard would increase the manufacturing cost of table saws and manufacturers would attempt to pass on the increased costs to consumers in the form of higher prices. Although some consumers might be more likely to purchase the safer table saws with the AIM technology, the expected price increase likely will result in a significant decrease in the quantity of table saws demanded. CPSC staff estimates that the number of table saws sold annually could decrease by about 90,000 to 250,000 units, at least initially. Because of the expected higher costs and reduced sales, some table saw manufacturers are likely to be adversely affected by a mandatory standard.

13. Comment: One commenter compared a potential regulation requiring an AIM technology in table saws to regulations requiring the use of seat belts. The commenter stated that a person who injures a finger with a table saw is unlikely to become a burden to society at large, which the commenter states is often the case with victims of automobile accidents. Therefore, the commenter stated, the decision of whether to purchase a table saw equipped with AIM technology versus one without it should be left up to the consumer. Another commenter implied, however, that taxpayers will either pay for table saw injuries on what the commenter called the front end, due to the additional cost of a table saw equipped with AIM technology, or the tail end due to the disability of consumers injured in accidents involving table saws. The commenter stated that he preferred paying the additional cost on the front end.

Response: These commenters appear to be discussing the issue of externalities that might be associated with table saw injuries. Externalities would be the costs of injuries that are borne by third parties, people other than users or suppliers of table saws. The existence of externalities may provide a justification for regulation, if the purpose of the regulation is to reduce the costs that fall on third parties not engaged in the activity (*i.e.,* supplying or using table saws). For table saws, the externalities are largely financial and would exist when the costs of medical treatment and work losses resulting from blade contact are shifted to the public through medical insurance premiums and unemployment compensation. However, these externalities constitute a relatively small proportion of the societal costs associated with table saw blade-contact injuries. As described in the preliminary regulatory analysis, the primary cost of injury is associated with the intangible costs of injury, or pain and suffering. These costs are largely borne by the injury victims, rather than third party bystanders. Therefore, although some of the medical costs and some of lost productivity costs associated with table saw injuries could be considered externalities, most of the societal costs associated with table saw injuries are borne by the injured person and do not, therefore, constitute externalities.

F. Unintended Consequences

1. Comment: Numerous commenters stated that adding AIM technology to table saws will give users a false sense of security and will increase unsafe behavior in users that will translate to injuries on other power tools. Many commenters felt that users will not learn to respect the dangers of table saws and power tools in general. Some asserted that excessive reliance on safety devices can lead to complacent behavior, which will inevitably result in an accident. One commenter suggested that mandating the AIM technology on all saws would result in additional non-blade contact and kickback injuries because consumers would be less likely to use other safety technology such as blade guards and riving knife/splitter combinations.

Response: As described in TAB E of the staff briefing package, consumer behaviors may adapt if an AIM system is installed on a table saw. CPSC staff agrees that reliance on the AIM safety technology could lead some users to reduce their use of other safety technology, such as blade guards or riving knife/splitter combinations, thereby increasing exposure and risk of operator blade contact. However, as discussed in section IV of the preamble, a review of incidents from the NEISS data and CPSRMS database that involve table saws indicates that blade-contact injuries continue to occur on table saws originally equipped with riving knives and modular blade guards. In addition, results of the modular blade guard survey indicate that a majority of respondents (80%) reported that there are circumstances that require the blade guard to be removed and a majority of respondents did not use the blade guard all of the time. Accordingly, consumers appear to already take actions that reduce the efficacy of safety devices, such as the removal of the blade guard or not choosing to use the modular blade guard at all.

Based on CPSC staff's analysis, the Commission cannot predict whether consumers will take less care when using a table saw with an AIM system relative to current table saws, but some consumers might be even less inclined to use blade guards, which many consumers already remove even in the absence of an AIM system. However, a key factor in assessing the ultimate effect of an AIM system is not simply whether consumers will be less careful when cutting with a table saw employing the system, or even whether the incidence of blade contact is likely to increase, but whether such changes likely will result in a decrease in serious injuries. If the system is effective and works as intended, the severity of an injury resulting from blade contact will be lessened, which likely would reduce the overall number of severe injuries associated with table saws.

2. Comment: Several commenters suggested that some users might modify the saws to bypass the safety mechanism, especially in the case of false activations, which users will perceive as a nuisance.

Response: Although some consumers might attempt to bypass the AIM safety technology, CPSC staff believes that consumers would have little reason to bypass it once it is already on the table saw. Because the AIM technology is not generally expected to interfere with the normal use of the table saw and can be used with most types of cuts (with the possible exception for dado cuts on some table saws), there would be no incentive to alter or bypass the safety mechanism. Moreover, staff does not believe there is a high rate of false activations. Based on reports of sales of replacement brake cartridge on the SawStop system, which requires replacement of the brake cartridge and blade after an activation of the system, SawStop estimates that the AIM system may activate about once every nine years of use.

3. Comment: Numerous commenters also stated that to avoid paying for a table saw with additional safety features, consumers will pursue more dangerous methods to cut wood by using other tools, such as circular saws, buying used products, or continuing to use an older table saw past its safety life.

Response: CPSC staff agrees that the proposed rule would increase the price of table saws, and that these price increases are likely to reduce sales. We do not know how consumers, who would have purchased a new table saw had the price not increased, would respond. Some may hire professionals instead of doing some projects themselves. Others might borrow or rent table saws, or use an older table saw that they would have preferred to replace. Some might also attempt to use other tools in the place of table saws, as the commenters suggest. If the substitute tools are risky, then the estimated benefits attributed to the proposed rule would be reduced. The Commission seeks comment on the likelihood that consumers will pursue more dangerous methods to cut wood if table saws are equipped with AIM technology and the alternatives consumers will use to do so.

4. Comment: A couple of commenters expressed concern for the impact of the proposed rule on the ShopSmith multi-tool system. The commenters stated that the ShopSmith equipment could not be redesigned to allow for the installation of a SawStop system. One commenter expressed concern that the proposed rule could force the company out of business.

Response: Incorporating an AIM technology on some table saws may present some especially difficult challenges that are not faced by other table saw manufacturers. Although the engineering challenges can be resolved, the upfront costs for incorporating the AIM system on some table saws may be substantial for a small business. As discussed in sections XI and XII of the preamble and TAB C and TAB D of the staff briefing package, it is possible that some small manufacturers would reduce their table saw offerings or even exit the table saw market if the proposed rule is issued as a final mandatory standard.

G. Training and Warnings

1. Comment: Several commenters stated that table saw injuries are best reduced by training and educating users on safe practices and operation of table saws. Many believed mandatory training in the form of certification is needed while others believed that instructional videos should be provided with every table saw purchase. Other commenters stated that only warnings or instruction labels are required to reduce injuries.

Response: As discussed in TAB E of the staff briefing package, CPSC staff agrees that warnings, instructions, and other methods of educating consumers about the proper use of table saws are important. However, the effectiveness of such approaches is known to be limited. For example, safety and warnings literature consistently identify a classic hierarchy of approaches that should be followed to control hazards. The use of warnings is viewed universally as less effective at eliminating or reducing exposure to hazards than designing the hazard out of a product or guarding the consumer from the hazard. Therefore, the use of warnings is lower in the hazard control hierarchy than these other two approaches. Warnings are less effective because they do not prevent consumer exposure to the hazard, and instead, they rely on educating consumers about the hazard and persuading consumers to alter behavior to avoid the hazard. In addition, to be effective, warnings rely on consumers behaving consistently, regardless of situational or contextual factors that influence precautionary behavior, including fatigue, stress, or social influences. Thus, CPSC staff believes that warnings should be viewed as ''last resort'' measures that supplement,

rather than replace, redesign or guarding, unless these higher level hazard-control efforts are not feasible.

Educational programs may offer more opportunities to present hazard information in varied ways and in greater detail than is possible on a warning label. However, CPSC staff believes that educational programs suffer from limitations similar to those associated with warnings because, like all hazard communications, the effectiveness of such programs depends on affected consumers not only receiving and understanding the message, but also being persuaded to heed the message. Mere knowledge or awareness of a hazard is not necessarily enough. Some versions of the hazard control hierarchy, particularly those in the context of industrial or organizational settings, include training as a separate approach at the same approximate level as warnings because training also involves educating consumers about potential hazards and proper actions or procedures to avoid those hazards. In fact, instructional materials that accompany products can be viewed as a form of training. Thus, warnings, instructions, educational programs, and training serve similar functions and have similar weaknesses.

Although CPSC staff supports the use of these approaches, including providing consumers with instructional videos, human error is inevitable, even among expert woodworkers. Even consumers who are fully aware of the hazards and how to avoid them may suffer from slips or lapses that could lead to blade contact and injury despite the consumer's best intentions to use a product safely. A performance requirement that can detect and react to blade contact in a way that lessens the consequences makes the table saw more forgiving of such errors and expected behaviors, so that the results are not catastrophic. Moreover, mandating a performance requirement for table saws would not preclude manufacturers from encouraging table saw purchasers to become trained on safe table saw practices. Manufacturers can provide additional instruction videos on safe table saw practices or provide free training.

H. Other Comments

1. Comment: Several commenters stated that CPSC should mandate AIM technology on table saws only in industrial or workshop settings or schools.

Response: As discussed in section VI.C. of the preamble, the Commission does not have authority to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by action taken by OSHA. However, if the risk to consumers cannot be sufficiently reduced or eliminated by OSHA's actions, the CPSC has the authority to address that risk of injury associated with the consumer product. As discussed in that section, the Commission believes that OSHA regulations do not sufficiently reduce the risk of blade-contact injuries to the consumer. Moreover, the Commission believes that there is no clear dividing line between consumer and professional saws, except at the very highest levels of price and performance. Although some of the more expensive, high voltage table saws may be used in construction work or by professional wood workers, many of these same saws may be also be used in the home, in schools, and in recreation (woodworking workshops, schools and clubs). Therefore, the Commission believes that these types of saws may be used more than occasionally by consumers and fall within the scope of the proposed rule. However, the Commission seeks comment regarding whether the scope of the rule should be modified to exclude certain types of table saws used primarily for commercial or industrial use.

2. Comment: Some commenters stated that the CPSC should provide an ''open license'' for AIM technology, offer a retrofit option for existing table saws, and encourage AIM technology through tax policy.

Response: The Commission has no authority under the CPSA to mandate an open license for AIM technology, require retrofits on existing table saws, or implement tax policies.

X. Description of the Proposed Requirement

A. Scope, Purpose and Effective Date—§ 1245.1

The proposed rule would apply to all table saws, as defined, including bench saws, contractor saws, and cabinet saws. The proposed rule would include a requirement to mitigate the risk of blade-contact injuries on table saws. Specifically, the proposed rule would establish a performance standard such that table saws, when powered on, must limit the depth of cut to 3.5 mm when a test probe, acting as a surrogate for a human body/finger, contacts a spinning blade at a radial approach of 1.0 m/s.

Under the CPSA, the effective date for a consumer product safety standard must not exceed 180 days from the date the final rule is published, unless the Commission finds, for good cause, that a later effective date is in the public interest. As discussed in section XI of the preamble, and TAB C of the staff briefing package, to meet the proposed performance requirements, it is likely that table saw manufacturers will have to develop new technology or redesign virtually all table saw models, retool production facilities, and enter into licensing arrangements. Because the Commission believes 180 days may not be adequate time to allow for such modifications, it is instead proposing an effective date of three years following publication of a final rule, at which time all table saws would be required to comply with the applicable requirements of the rule.

B. Definitions—§ 1245.2

The proposed rule would provide that the definitions in section 3 of the CPSA (15 U.S.C. 2051) apply. In addition, the proposed rule would include the following definition:

- Table saw—a woodworking tool that has a motor-driven circular saw blade, which protrudes through the surface of a table. Table saws include bench saws, contractor saws, and cabinet saws.

The Commission seeks comment on whether the definition of a table saw should be revised or whether additional definitions are necessary.

C. Requirements for Table Saw Blade Contact—§§ 1245.3 and 1245.4

1. Description of Requirement

The proposal would require table saws, when powered on, to limit the depth of cut to 3.5 mm when a test probe, acting as a surrogate for a human body/finger, makes contact with a spinning saw blade at a radial approach rate of 1.0 m/s. The proposal would require that the test probe allow for the accurate measurement of the depth of cut from contact with the saw blade to assess compliance with the proposed requirement. Any test probe that is used should have the appropriate properties (such as electrical, optical, thermal, electromagnetic, ultrasound, etc.) to indicate human body/finger contact with the saw blade and the appropriate physical properties to accurately measure depth of cut. The test probe and test method described in TAB A of staff briefing package, (Appendix A), are considered appropriate for the evaluation of AIM systems using an electrical detection system. This test method may be used for such systems and will be used by CPSC staff in evaluating such systems. However, the Commission does not propose to make this test method mandatory because

other AIMS systems may use a different detection approach. For AIM systems using a different detection approach, the method should be modified based on sound material science and engineering knowledge to accurately assess compliance with the proposed requirement.

2. Rationale

The Commission believes that an AIM system can be used to reduce or limit the severity of a table saw blade-contact injury in conjunction with existing table saw voluntary standard requirements for a blade guard and riving knife. AIM systems provide a layer of safety that can mitigate a blade-contact injury if the blade guard or riving knife are removed or fail to function properly, as well as those blade-contact injuries that can occur when a blade guard or riving knife are in place and functioning properly, but where blade contact occurs nonetheless.

A performance requirement that limits the depth of cut to a test probe that contacts a saw blade to 3.5 mm will significantly reduce the severe lacerations, fractures, amputations, and avulsions associated with operator blade contact incidents on table saws because the probe will have the appropriate properties to indicate human body/finger contact with the saw blade and the equivalent injury mitigation on a real human finger will avoid most microsurgery. Most microsurgery will be avoided because the neurovascular bundle in a human little finger, which contains nerves and arteries, is at a depth of approximately 3.5 mm below the 0.5 mm thick epidermal layer of the skin. CPSC staff has determined that a 3.5 mm depth of cut into a conductive test probe is an appropriate surrogate for a 4mm depth of cut into a finger with insulating epidermis over conductive tissue. Additionally, incidents that occur under conditions that increase AIM performance (such as slower approach rate of the hand/finger to the saw blade and/or circumstances that increase detection) may result in minimal injuries.

The Commission recognizes there may be some scenarios, such as kickback, which can cause the operator's hand to be ''pulled'' into the blade at a high rate of speed or lead the operator to reach as fast as possible for a falling workpiece. There are other scenarios where the radial velocity of the hand/finger may exceed 1 m/s when it contacts the saw blade. At approach speeds greater than 1 m/s, AIM system performance may result in injury severity that requires extensive medical attention. Such incidents may include the microsurgical repair of nerves, blood vessels, and tendons for an incident that might otherwise have resulted in an amputation or could involve injury to several digits or a wider area. Although some incidents may occur under conditions so demanding that AIM performance is unable to prevent a severe injury from occurring, available data on radial approach rates during kickback and non-kickback-related table saw blade contact incidents reviewed by staff indicate that the approach rate does not exceed 0.368 m/s.[65] Thus, CPSC staff's testing and research indicate that the majority of operator blade-contact injuries from table saws can be reduced or mitigated by the proposed performance requirement.

D. Prohibited Stockpiling—§ 1245.5

In accordance with Section 9 of the CPSA, the proposed rule contains a provision that would prohibit a manufacturer from ''stockpiling'' or substantially increasing the manufacture or importation of noncomplying table saws between the date of the final rule and its effective date. The rule would prohibit the manufacture or importation of noncomplying table saws in any period of 12 consecutive months between the date of promulgation of the final rule and the effective date, at a rate that is greater than 120 percent of the rate at which they manufactured or imported table saws during the base period for the manufacturer. The base period is any period of 365 consecutive days, chosen by the manufacturer or importer, in the 5-year period immediately preceding promulgation of the rule.

The 5-year period in the anti-stockpiling provision is intended to allow manufacturers and importers sufficient flexibility to meet normal changes in demand that may occur in the period between the promulgation of a rule and its effective date while limiting their ability to stockpile noncomplying table saws for sale after that date. The Commission seeks comments on the proposed product manufacture or import limits and the base period with respect to the anti-stockpiling provision.

E. Findings—§ 1245.6

In accordance with the requirements of the CPSA, we are proposing to make the findings required by section 9 of the CPSA. The proposed findings are discussed in section XVIII of the preamble.

[65] *See* Gass, S. (2012), *supra* note 50.

XI. Preliminary Regulatory Analysis

The Commission is proposing to issue a rule under sections 7 and 9 of the CPSA. The CPSA requires that the Commission prepare a preliminary regulatory analysis and that the preliminary regulatory analysis be published with the text of the proposed rule. 15 U.S.C. 2058(c).

A. Introduction

The CPSC is issuing a proposed rule to address the unreasonable risk of blade-contact injuries associated with table saws. This rulemaking proceeding was initiated by an ANPR published in the **Federal Register** on October 11, 2016. In 2015, to enhance CPSC's understanding of the market for table saws, CPSC staff entered into two contracts with Industrial Economics, Inc. (IEc) to conduct market research and cost impact analysis on table saws. One report, titled ''*Revised Final Table Saws Market Research Report*'' (March 28, 2016) (referred to as IEc, 2016a), updates information relied upon in the ANPR and provided in public comments concerning the market for table saws. The report uses publically available information and limited outreach to potentially affected entities. The other report, titled ''*Final Table Saws Cost Impact Analysis*'' (June 9, 2016) (referred to as IEc, 2016b), estimates the manufacturing and other costs of possible requirements intended to mitigate table saw blade-contact injuries based on previous information collected by the CPSC in the ANPR, public comments, limited interviews with table saw manufacturers, additional research, and the results of IEc, 2016a. In addition to CPSC staff's analysis of existing data, studies, and reports, staff relies on the IEc reports for additional data and information to support the staff's preliminary regulatory analysis (TAB C of the staff briefing package) and initial regulatory flexibility analysis (TAB D of the staff briefing package). These reports are available on the CPSC's Web site at *https://www.cpsc.gov/research-statistics/other-technical-reports*.

B. Market Information

1. Manufacturers

A total of 22 firms are known to supply table saws to the U.S. market. This does not include manufacturers of miniature table saws used for constructing doll houses and other hobby products, or tile-cutting table saws. In addition, the 22 firms do not include a number of Asian table saw manufacturers who may have some limited U.S. distribution.

The Power Tool Institute (PTI) estimates that its member companies account for 80 percent of all table saws sold in the United States. Most of these companies are large, diversified international corporations with billions of dollars in sales, such as Stanley Black and Decker, Robert Bosch, Makita, and Techtronic Industries Co., Ltd. These four large, diversified firms are currently supplying table saws to the U.S. market, but table saws make up a relatively small part of their revenues, probably less than one percent. PTI tends to represent the mass market bench table saw manufacturers, while many of the smaller suppliers are primarily in the cabinet and contractor saw market segments.

With the exception of two firms that sell only table saws or multi-purpose tools incorporating table saws (*i.e.,* SawStop and Shopsmith, respectively), anecdotal information provided to CPSC staff suggests that, for the smaller, more specialized firms supplying table saws to the U.S. market, table saws are generally not a large percentage of firms' sales. One company reported that table saw sales contribute a negligible fraction of its $15 million annual revenue. Another company with an annual revenue of $20 to $40 million stated that table saws represent approximately five percent of total sales. Similarly, a third company indicated that only seven to eight percent of total revenue is attributable to table saw sales.[66]

2. Retail Prices of Table Saws

The range of prices for table saws generally overlaps for three products: Bench, contractor, and hybrid saws. Bench saws are the least expensive, ranging in price from $129 to $975, with a few exceptions. Prices for contractor saws range from $529 to $2,049, and prices for hybrid saws range from $675–$1,595. Generally, cabinet and sliding saws are more expensive. Prices for cabinet saws range from $1,199 to $5,349. The price range for sliding table saws ($2,850–$24,995) overlaps with the range for cabinet saws, but sliding saws are typically more expensive.

The SawStop models containing the AIM technology are consistently priced at the upper end of the price range in each of the three primary table saw categories (bench, contractor, and cabinet). Aside from a couple of bench saws priced at just under $1,500, the SawStop bench saw is next most expensive in the bench saw category at $1,299–$1,399, depending on the distributor. Similarly, the three SawStop contractor saws, ranging in price from $1,599–$2,049, represent some of the most expensive models in that product category, including the highest-priced offering. The SawStop cabinet models range in price from $2,299–$5,349, depending on power and performance. The SawStop model priced at $5,349 represents the highest priced cabinet saw. The Bosch REAXX™ saw ranges in price from $1,299–$1,499.

3. Types of Table Saws Commonly Used By Consumers

There are three primary categories of table saws: Bench, contractor, and cabinet. Bench saws tend to be lightweight, portable, and with several exceptions, generally are priced from about $150 to $1,000. Bench saws generally are intended for consumer use, but also are used at work-sites. Contractor saws are larger, heavier, and more powerful than bench saws, and generally are priced from $500 to $2,000. Cabinet saws (also referred to as stationary saws) weigh from about 300 to 1,000 pounds, are not portable, and generally are priced from about $1,200 to $5,000. Although these saws all are used by consumers to some extent, contractor and cabinet saws are more likely to be used by professional and occupational users.

Based on staff discussions with industry representatives, electrical requirements and power appear to provide the best distinction between table saws typically used by consumers and those used most often in industrial settings. Two industry representatives indicated to staff that saws operating at 1.75 horsepower or greater likely cannot be run on typical household wiring. Most consumers do not have the necessary electrical wiring, specifically the specialized outlets and adapters, to accommodate power tools with horsepower ratings greater than 1.75 or requiring 220–240 volt power. Sliding table saws and many other cabinet saws require such electrical capabilities and, therefore, are less likely to be used by consumers. However, one manufacturer indicated the firm has begun development of a sliding saw aimed at the high-end do-it-yourself (DIY) market, and a representative from another firm indicated that some serious woodworking hobbyists may wire their home workshops to accommodate the more powerful saws. CPSC staff's review showed that 89 cabinet, hybrid, and sliding models run solely on 220–240 volts. Given wiring requirements, these 89 higher-voltage models are less likely to be used by typical consumers than industrial users.

4. Sales and Numbers in Use

Although the design and engineering of table saws may occur in the United States, most table saws are currently manufactured overseas; several firms staff contacted indicated that their saws are manufactured in Taiwan. For example, one company indicated that it operates quality control offices in Taiwan and China, and imports saws from Asia. This is supported by data from the ITC, which indicates that in 2014 approximately 99 percent of imported table saw units were built in Taiwan and China.[67] Additionally, a small volume of expensive saws most likely intended for industrial use and not intended for consumer use were imported from European and Canadian manufacturers.[68]

The annual number of table saws in use, a measure of risk exposure, was estimated with the CPSC's Product Population Model (PPM), a computer model that projects the number of products in use given estimates of annual product sales and product failure rates.[69] According to PTI, total annual shipments of all table saws to the U.S. market from 2002 to 2014 have ranged from 429,000 to 850,000. Estimates of sales value are not readily available industry-wide. CPSC staff estimated that bench saws account for about 75 percent of the units sold. Staff assumed further that contractor saws (including hybrids) and cabinet saws account for 20 percent and 5 percent, respectively. The failure rate used by staff (*i.e.,* the rate at which table saws go out of use) follows a gamma distribution, a commonly used distribution for the failure of products. That showed an average product life of 10 years for bench saws, 17 years for contractor saws, and 24 years for cabinet saws. Using these parameters, CPSC staff projected a total of about 8.2 million table saws in use in the United States in 2015, including about 5.1 million bench saws, 2.3 million contractor saws, and 0.8 million cabinet saws. Thus, staff estimated that bench, contractor, and cabinet saws account for about 62 percent, 28 percent, and 10

[66] IEc, 2016a at 12.

[67] Data compiled from tariff and trade data from the U.S. Department of Commerce and the ITC for Harmonized Tariff Schedule classification numbers 8465910036 (Tilting arbor table saw, woodworking) and 8465910078 (Sawing machines, woodworking, NESOI). *See https://dataweb.usitc.gov/scripts/user_set.asp.*

[68] For example, a $25,000 computerized numerically controlled (CNC) panel saw designed to cut large pieces of wood, like sheets of plywood is likely only to be used industrially.

[69] Lahr, M.L., Gordon, B.B., 1980. *Product life model feasibility and development study.* Contract CPSC–C–79–009, Task 6, Subtasks 6.01–6.06). Columbus, OH: Battelle Laboratories.

percent of the table saw population, respectively. The Commission seeks comments concerning the proportion of table saw sales by table saw type, or any additional information on the expected product life of table saws.

C. Benefit-Cost Analysis

This section of the analysis consists of a comparison of the benefits and costs of the proposed rule. The analysis is conducted from a societal perspective, considering all of the significant costs and health outcomes. CPSC staff reviewed the characteristics and societal costs of table saw blade-contact injuries. The benefits of the proposed rule are measured as the estimated reduction in the societal costs of injuries resulting from the use of saws containing the AIM technology. The costs of the proposed rule are defined as the added costs associated with the incorporation of the AIM technology in the table saws. Staff calculates the benefits and costs of the proposed rule on a per product in use basis.

Because of the differences in the physical characteristics, the use patterns, and the likely population of users of each of the table saw types (*i.e.,* bench, contractor, and cabinet saws), an independent evaluation of the benefits and costs for each table saw type could be useful. For example, the costs of the proposed rule could exceed the benefits for one or more saw types, even though, in aggregate, benefits could exceed costs for the market as a whole. However, because staff did not have information on the types of saws involved in the injuries, we did not assess the societal costs or benefits of the proposed rule by saw type. Nevertheless, staff has sufficient information on the potential costs of the proposed rule to conduct a breakeven analysis for the various saw types—an analysis that allows us to estimate the number of injuries for each of the saw types that would need to be prevented for the benefits of the proposed rule to equal or exceed the costs. Aggregated estimates of the benefits and cost on an annual basis can be readily calculated given projections of annual table saw sales. CPSC staff also compared breakeven estimates for the various saw types to possible hypothetical distributions of injuries to estimate the number of injuries for each of the saw types that would need to be prevented for the benefits of the proposed rule to equal or exceed the costs.

1. Blade-Contact Injuries

The proposed rule is intended to address table saw injuries resulting from blade contact. As discussed in section IV of the preamble and TAB B of the staff briefing package, an estimated 30,800 injuries reported through NEISS during 2015 were likely to have involved blade contact.

In addition to injuries initially treated in hospital EDs, many product-related injuries are treated in other medical settings, such as, among others, physicians' offices, clinics, and ambulatory surgery centers. Some injuries also result in direct hospital admission, bypassing the hospital ED entirely. The number of table saw injuries treated outside of hospital EDs are estimated with the CPSC's ICM, which uses empirical relationships between the characteristics of injuries (diagnosis and body part) and victims (age and sex) initially treated in hospital EDs and the characteristics those initially treated in other settings.[70] The ICM estimate of injuries treated outside of hospitals or hospital EDs (*e.g.,* in doctors' offices, clinics, *etc.*) is based on data from the Medical Expenditure Panel Survey (MEPS).

The MEPS is a nationally representative survey of the civilian, non-institutionalized population that quantifies individuals' use of health services and corresponding medical expenditures. It combines data from a panel of participants interviewed quarterly over a two-year time period with data from the respondents' medical providers. The MEPS is administered by the Agency for Healthcare Research and Quality (AHRQ). The ICM uses the MEPS data, in combination with a classification tree analysis technique, to project the number and characteristics of injuries treated outside of hospitals.

To project the number of direct hospital admissions which bypass hospital EDs, the ICM uses data from the Nationwide Inpatient Sample of the Healthcare Cost and Utilization Project (HCUP–NIS), which was also analyzed using a classification tree analysis technique. HCUP is a family of healthcare databases and related software tools and products developed through a federal-state-industry partnership and sponsored by AHRQ. The HCUP–NIS provides information annually on approximately 3 to 4 million inpatient stays from about a thousand hospitals.

The classification tree analysis technique (also called decision tree) is a statistical tool that divides and sorts data into smaller and smaller groups for estimating the ED share of injuries until no further gains in predictive power can be obtained. This technique allows for more precise estimates of injuries treated in doctor visits or injuries admitted directly to the hospital than other regression techniques. For example, where data is available, the age and sex of the victim can have an influence on the estimates of the number of injuries treated outside the emergency department. When we combine the national estimates of the NEISS with the non-ED estimates from the ICM using classification tree techniques, we obtain a total of medically treated injuries.

Based on the annual estimate of about 30,800 blade-contact injuries initially treated in hospital EDs, the ICM projects approximately 24,050 blade-contact injuries treated in other treatment settings. Combined with the ED-treated injuries, there were an estimated annual total of about 54,850 medically treated blade-contact injuries. About 13.7 percent of the medically treated injuries involved amputations, 56.9 percent involved lacerations, 22.8 percent involved fractures, and 6.1 percent involved avulsions.[71] About 27.5 percent of the amputations resulted in hospital admission, compared to about 4.0 percent of lacerations and 12.1 percent of fractures. About 31.5 percent of the amputations were treated in the doctors' offices/clinics and other non-hospital settings, compared with about 41.0 percent of lacerations, 50.3 percent of fractures, and 38.7 percent of avulsions.

The blade-contact injury rate per 100,000 saws is calculated by dividing medically treated injuries by the estimated number of table saws in use. Overall, the blade-contact injury rate for table saws amounted to about 670 medically treated injuries per 100,000 saws. An approximate 95 percent confidence interval for medically treated injuries, based on estimates of the coefficient of variation (CV) from the NEISS injury estimates, ranges from about 550 to 790 medically treated injuries per 100,000 saws in use.

2. Injury Costs of Blade-Contact Injuries

The societal costs of blade-contact injuries represent the pool from which the benefits of a blade contact rule are derived. The societal costs of these injuries are quantified with the ICM. The ICM is fully integrated with NEISS, and, in addition to providing estimates of the societal costs of injuries reported through NEISS, it also estimates the costs of medically treated injuries that

[70] Miller *et al.,* 2000, Lawrence, B., 2013, *supra* note 57; Bhattachara, S., *et al.,* 2012, *supra* note 61.

[71] Medically treated table saw injuries, by injury diagnosis, differ from the NEISS estimates because the NEISS cases are limited to those initially treated in hospital emergency departments.

are initially treated outside of hospital emergency departments. The major aggregated societal cost components provided by the ICM include medical costs, work losses, and the intangible costs associated with lost quality of life or pain and suffering.[72]

Medical costs include three categories of expenditures: (1) Medical and hospital costs associated with treating the injury victim during the initial recovery period and in the long run, including the costs associated with corrective surgery, the treatment of chronic injuries, and rehabilitation services; (2) ancillary costs, such as costs for prescriptions, medical equipment, and ambulance transport; and (3) costs of health insurance claims processing. Cost estimates for these expenditure categories were derived from a number of national and state databases, including the MEPS, the HCUP–NIS, the Nationwide Emergency Department Sample (NEDS), the National Nursing Home Survey (NNHS), MarketScan® claims data, and a variety of other federal, state, and private databases.

Work loss estimates include: (1) The forgone earnings of the victim, including lost wage work and household work, (2) the forgone earnings of parents and visitors, including lost wage work and household work, (3) imputed long term work losses of the victim that would be associated with permanent impairment, and (4) employer productivity losses, such as the costs incurred when employers spend time juggling schedules or training replacement workers. Estimates are based on information from HCUP–NIS, NEDS, Detailed Claims Information (a workers' compensation database), the National Health Interview Survey, U.S. Bureau of Labor Statistics, and other sources.

The intangible, or non-economic, costs of injury reflect the physical and emotional trauma of injury as well as the mental anguish of victims and caregivers. Intangible costs are difficult to quantify because they do not represent products or resources traded in the marketplace. Nevertheless, they typically represent the largest component of injury cost and need to be accounted for in any benefit-cost analysis involving health outcomes.[73] The ICM develops a monetary estimate of these intangible costs from jury awards for pain and suffering. Although these awards can vary widely on a case-by-case basis, studies have shown them to be systematically related to a number of factors, including economic losses, the type and severity of injury, and the age of the victim.[74] Estimates for the ICM were derived from regression analysis of jury awards in nonfatal product liability cases involving consumer products compiled by Jury Verdicts Research, Inc.

Based on ICM estimates, the aggregate present value of the injury costs associated with the estimated 54,843 medically-treated table saw injuries amounted to about $4.06 billion (in 2014 dollars) when future injury losses (primarily those associated with long term work loss) were discounted at 3 percent. This suggests injury costs of about $74,050 per injury (*i.e.,* $4.06 billion ÷ 54,843 injuries). When future losses were discounted at 7 percent, the aggregated present value amounted to about $3.65 billion, or about $66,650 per injury (*i.e.,* $3.65 billion ÷ 54,843 injuries).

OMB (2003) recommends discounting future benefits (or costs) using both 3 percent and 7 percent discount rates. The 7 percent discount rate is intended to reflect the rate of return to private capital in the U.S. economy. The 3 percent rate is intended to represent what is sometimes called the ''social rate of time preference,'' which is more consistent with the rate which ''society'' discounts future consumption flows to their present value.[75] Using the lower social discount rate means that future benefits are valued somewhat more highly than they would be with the a higher discount rate. Most sources suggest that the social rate of time preference is more appropriate when evaluating health-related interventions,[76] which is the intended purpose of the proposed rule. Consequently, the 3 percent discount rate is probably the more appropriate discount rate for evaluating the benefits and costs of the proposed rule. Presenting most results using both the 3 percent and 7 percent, as recommended by OMB, shows the sensitivity of the results to variations in the discount rate.

The distribution of injury costs, by medical treatment setting (using the 3 percent discount rate) showed that overall, medical costs and work losses accounted for roughly 30 percent of the total, while the non-economic losses associated with pain and suffering accounted for 70 percent. Injury cost estimates for non-hospitalized injuries ranged from about $28,000 for blade-contact injuries treated outside of hospitals and EDs, to about $42,000 for injuries initially treated in hospital EDs (but not admitted). Injury costs for hospitalized injuries, in contrast, averaged about $450,000 per injury.

While amputations accounted for about 13.7 percent of the medically treated blade-contact injuries, they accounted for almost 64 percent of the annual estimate of $4.06 billion in societal costs resulting from blade contact. The average imputed cost per amputation injury amounted to about $345,000, and ranged from $120,000 to $195,000 for non-hospitalized amputations to about $825,000 per hospitalized amputation.[77] If

[72] Miller *et al.,* 2000, Lawrence, B., 2013 *supra* note 57; *see also,* Lawrence, Bruce, *Impact of alternative discount rates on injury cost model estimates* (Contract CPSC–D–05–0006, Task Order 7). Calverton, MD: Pacific Institute for Research and Evaluation (Nov. 2008); Lawrence, Bruce, *Updated price indexes for the Injury Cost Model* (Contract CPSC–D–0003, Task Order 3, Subtask 4). Calverton, MD: Pacific Institute for Research and Evaluation (Aug. 2015); Lawrence, Bruce, *Update medical costs for ED-treated injuries* (Contract CPSC–D–0003, Task Order 3, Subtask 1). Calverton, MD: Pacific Institute for Research and Evaluation (Jan. 2015); Lawrence, Bruce, *Update medical costs hospital-admitted injuries* (Contract CPSC–D–0003, Task Order 3, Subtask 2). Calverton, MD: Pacific Institute for Research and Evaluation (Jan. 2015); Lawrence, Bruce, *Updated survival probabilities for the Injury Cost Model* (Contract CPSC–D–0003, Task Order 3, Subtask 3). Calverton, MD: Pacific Institute for Research and Evaluation (Aug. 2015).

[73] Rice, Dorothy P., MacKenzie, Ellen J., and Associates, 1989. *Cost of injury in the United States: A report to Congress.* San Francisco, CA: Institute for Health & Aging, University of California and Injury Prevention Center, The Johns Hopkins University; Haddix, Anne C., Teutsch, Steven M., Corso, Phaedra S., 2003. *Prevention effectiveness: A guide to decision and economic evaluation* (2nd ed.). New York: Oxford University Press; Cohen, Mark A., Miller, Ted R., 2003. ''Willingness to award'' nonmonetary damages and implied value of life from jury awards. *International Journal of Law and Economics,* 23 at 165–184; Neumann, Peter J., Sanders, Gillian D,, Russell, Louise B., Siegel, Joanna E. Ganiats, Theodore G., 2016. *Cost-effectiveness in health and medicine: Second Edition.* New York: Oxford University Press.

[74] Viscusi, W. Kip, 1988. The determinants of the disposition of product liability cases: Systematic compensation or capricious awards? *International Review of Law and Economics,* 8, at 203–220; Rodgers, Gregory B., 1993. Estimating jury compensation for pain and suffering in product liability cases involving nonfatal personal injury. *Journal of Forensic Economics 6*(3), at 251–262; Cohen, Mark A., Miller, Ted R. (2003). ''Willingness to award'' nonmonetary damages and implied value of life from jury awards. *International Journal of Law and Economics,* 23, at 165–184.

[75] OMB, 2003. *Circular A–4: Regulatory analysis.* Washington, DC: Office of Management and Budget. *https://www.whitehouse.gov/omb/circulars_a004_a-4.*

[76] Gold, Marthe R., Siegel, Joanna E. Russell, Louise B., Weinstein, Milton C., 1996. *Cost-effectiveness in health and medicine.* New York: Oxford University Press; Haddix, Anne C., Teutsch, Steven M., Corso, Phaedra S., 2003. *Prevention effectiveness: A guide to decision and economic evaluation* (2nd ed.). New York: Oxford University Press; Neumann, Peter J., Sanders, Gillian D., Russell, Louise B., Siegel, Joanna E., Ganiats, Theodore, G., 2016. *Cost-effectiveness in health and medicine: Second Edition.* New York: Oxford University Press.

[77] About 29.3 percent of the amputation injury costs were attributed to medical costs and work

amputations were excluded from the injury cost estimates, the injury costs would have been reduced from about $74,050 per injury to about $31,200 per injury.

In contrast to the average injury cost of about $345,000 per medically treated amputation, the average imputed cost for lacerations (which accounted for about 56.9 percent of medically treated injuries) amounted to about $19,500. The average imputed cost for fractures (accounting for about 22.8 percent of injuries) and avulsions (6.1 percent of injuries) amounted to about $48,250 and $72,900, respectively.

3. Societal Costs, per Table Saw in Use

Table 10 presents estimates of the present value of societal costs, per table saw in use. Row (a) shows the aggregate annual societal costs, by discount rate. Row (c) shows annual societal costs *per saw,* and the results are calculated by dividing the aggregate annual societal costs (row a) by table saws in use (row b).

Row (e) presents the present value of societal costs, and the results were calculated using the row (c) estimate of annual societal costs and a 3 percent and 7 percent discount rate over the saw's expected useful product life (row d). For this analysis, the expected product life was based on an average for the three saw types, weighted by the proportion of saws in use for each table saw type. The present value figure amounts to about $5,400 per table saw using a 3 percent discount rate and about $3,800 at 7 percent; this present value estimate represents the maximum per unit benefits that could be derived from a rule addressing blade contact if such a rule prevented all blade-contact injuries.

TABLE 10—PRESENT VALUE OF SOCIETAL COSTS PER TABLE SAW IN USE

	Discount rate	
	3 percent	7 percent
(a) Aggregate Annual Societal Costs (Billions $)	$4.06	$3.65
(b) Table Saws in Use (Millions)	8.2	8.2
(c) Societal Costs per Table Saw [(a) ÷ (b)]	$495	$445
(d) Expected Useful Product Life (years)	13.3	13.3
(e) Present Value of Societal Costs, per Table Saw	$5,366	$3,772

4. Effectiveness and Expected Benefits of the Proposed Rule

The benefits of the proposed rule are measured as the reduction in the societal costs of injuries resulting from the use of the safer saws. Consequently, CPSC staff estimated the expected effectiveness of the proposed rule in preventing blade-contact injuries. Although effectiveness cannot be determined precisely, staff believes that an AIM system can reduce or mitigate a blade-contact injury even if the blade guard or riving knife is removed or fails to function properly. Based on testing experience with existing AIM systems, CPSC staff believes that the proposed performance requirement can significantly reduce the severity of injury involving blade contact.

However, a rule requiring manufacturers to develop an AIM technology to meet the proposed performance requirement will not prevent all blade-contact injuries. It will not prevent blade-contact injuries that occur: (1) When the blade is operating but the AIM system has been deactivated; (2) when the operator's hand is moving into the blade so quickly that contact with the blade cannot be reduced sufficiently to prevent serious injury; and (3) when the AIM technology leads to complacency or reductions in safety efforts by users that result in injury.

Based on CPSC staff's testing of existing AIM systems, we assume that the AIM technology will prevent or substantially or mitigate 70 percent to 90 percent of blade-contact injuries. The estimate of 90 percent effectiveness assumes that all blade-contact injuries, including blade-contact injuries initiated by kickback, will be addressed by the AIM technology, but that about 10 percent of blade-contact injuries will not be prevented or mitigated because of the reasons given above. The estimate of 70 percent effectiveness assumes that about 40 percent of blade-contact injuries involved kickback, and that only about half of the kickback injuries would be prevented or substantially mitigated. Additionally, we assume that the mitigated accidents that would have resulted in amputations, avulsions, and fractures are not prevented entirely, but become medically treated lacerations, and that accidents that would have resulted in medically treated lacerations are either mitigated to injuries that do not require medical attention or are prevented entirely.

Expected benefit of the rule, per table saw, over the saws expected product life are as follows:

- Benefits at 70 percent effectiveness at 3 percent—$3,335
- benefits at 70 percent effectiveness at 7 percent—$2,345
- benefits at 90 percent effectiveness at 3 percent—$4,288
- benefits at 90 percent effectiveness at 7 percent—$3,015

The benefits at 70 and 90 percent effectiveness, result in about a 62 percent and 80 percent reduction, respectively, in the estimated societal costs.

5. Costs To Meet Performance Requirements

This section discusses the types of costs that would result from a rule that would require an AIM safety technology to meet the proposed performance requirement, and quantifies some estimates of these costs provided by industry participants. Table saw manufacturers are likely to incur three primary types of costs to incorporate AIM technology into their table saws, including:

- *Costs to develop AIM technology.* Manufacturers would have to either design and develop their own AIM technology or license the AIM technology developed and owned by another party.
- *Redesign and retooling costs.* Incorporating AIM technology into existing models would require manufacturers to redesign each model and retool the facilities where the saws are manufactured. All table saw models not currently incorporating the AIM technology likely would require redesign to provide room for blade retraction, to allow access for users to

loss; 70.7 percent were attributed to pain and suffering.

change the cartridge and, if necessary, the blade, and to withstand the force of the AIM system being triggered.

• *Materials costs.* The combination of the addition of a brake cartridge, or other means of stopping or retracting the blade after contact with flesh, and the redesign of the table saw to accommodate the additional electronic components and wiring, the required clearances, and the weight and dimensions of the AIM technology, would result in increased material costs.

a. Costs To Develop AIM Technology

The proposed performance requirement for table saws would limit the depth of cut to a test probe, upon making contact with the saw blade at a radial approach rate of 1.0 m/s, to 3.5 mm. Although the proposed rule would allow for a variety of detection methods (such as electrical, optical, thermal, electromagnetic, ultrasound) to comply with the proposed requirements, the Commission is aware that, currently, only two manufacturers have developed an AIM technology using an electric detection system that is available on the market: SawStop and Bosch REAXX™ table saws.[78] If manufacturers are unable to develop their own AIM system, or if their AIM technology infringes on SawStop patents, we believe that ongoing patent infringement litigation initiated by SawStop may have a bearing on SawStop or other companies' willingness to license their AIM technologies. Various stakeholders have expressed concern that a mandatory rule could impose a monopoly for SawStop technology given the numerous patents that have been filed on its behalf. PTI reports that SawStop has filed more than 140 patent applications, and has over 100 issued patents pertaining to SawStop technology.

On July 16, 2015, SawStop filed a complaint in the U.S. District Court in Oregon for patent infringement against Bosch. On the same date SawStop also filed a complaint against Bosch with the ITC requesting a permanent order excluding from entry into the United States certain table saws incorporating AIM technology and components that infringe on SawStop's patent claims. The complaint filed in the District Court in Oregon is on hold pending the final decision of the ITC. In the ITC proceeding, an administrative law judge (ALJ) issued an initial determination in September 2016 that the Bosch REAXX™ bench saw infringes on several SawStop patents.[79] Specifically, the ALJ found that Bosch infringes the claims of U.S. Patent No. 7,895,927 ('927 Patent),[80] titled ''Power Equipment with Detection and Reaction Systems''; and U.S. Patent No. 8,011,279 ('279 Patent) titled ''Power Equipment with Systems to Mitigate or Prevent Injury.'' [81]

On November 10, 2016, the ITC decided not to review the ALJ's initial determination, and requested that interested parties provide written submissions on the issues of remedy, the public interest, and bonding by November 22, 2016, with reply submissions due December 2, 2016. On January 27, 2017, the ITC issued remedial orders including a limited exclusion order and cease and desist order against Bosch effective March 29, 2017. On April 6, 2017, Bosch filed an appeal of the ITC determination in the U.S. Court of Appeals for the Federal Circuit.

The outcome of the ongoing lawsuit involving the SawStop technology will determine some of the impacts that may result from a mandatory rule requiring AIM technology in table saws. If the court determines that the patents covering the SawStop technology allow for companies to manufacture their own saws with alternative AIM technologies (such as the Bosch REAXX™ saw), then some manufacturers may choose to try to develop their own proprietary technology or license the Bosch technology (if available) as an alternative to the SawStop technology.

Alternatively, if the court decides that alternative technologies do in fact infringe upon SawStop patents, then SawStop may effectively have a monopoly on the technology needed to comply with a mandatory rule until the patents expire. Other manufacturers likely would be required to work with SawStop to license the SawStop technology for use in their saws, or leave the table saw market. PTI and SawStop agree that this is the case. The level at which the royalty payments are set will play a significant role in determining the economic impacts the CPSC's proposed rule would have on table saw manufacturers. We note that some of the allegedly infringed upon patents may expire in 2020 ('927), and 2022 ('279). However, given the extensive number and reach of the SawStop patents, we do not know how, and to what extent, the SawStop patents may impact companies who attempt to introduce alternative AIM technologies. Nor do we know when the other SawStop patents expire or whether SawStop will file additional patents.

The royalty fee for licensing the AIM technology from SawStop is uncertain. Although Dr. Gass has indicated that SawStop would accept royalty payments of 8 percent of a saw's wholesale price if all table saws are required to use SawStop's AIM technology,[82] there is no certainty that SawStop would actually license the technology under terms that would be acceptable to other manufacturers. Indeed, with the exception of one company,[83] several companies that have attempted to license the SawStop technology thus far have not been successful.[84]

CPSC staff believes that in addition to the direct manufacturing and replacement parts costs and the lost consumer surplus discussed below, approximately $30 million to $35 million annual royalty fees for the AIM technology could accrue to patent holders. This estimate is based on the assumption that royalty fees will amount to about 8 percent of the wholesale costs of table saws when a rule would become effective. However, because royalties represent transfers from manufacturers to a patent holder, they are not included as costs for purposes in the benefit-cost analysis.[85] The rationale for not including royalties is based on the premise that royalty fees represent a transfer from one market segment to another (*i.e.,* from table saw manufacturers to patent holders) and remain available (by a different party) for productive use. Nevertheless, from the point of view of an individual manufacturer who pays the royalty, the payment represents a cost. Table saw manufacturers who would be paying royalties to a competitor would, in

[78] A third company, Whirlwind Tool Company, has developed a ''Black Box flesh-sensing prototype,'' which does not involve a blade retraction system, but uses a fixed protective guard and a very rapid, non-destructive motor-braking to stop the saw blade when the operator's hand is too close to the spinning blade. However, the Whirlwind system is not yet available in the market.

[79] Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof, USITC, Inv. No. 337–TA–965 (ALJ Thomas B. Pender, Sept. 9, 2016).

[80] As described in ID, the '927 patent generally describes woodworking machine safety systems that include reaction systems designed to retract a cutting tool below a working system with approximately 14 milliseconds after the detection of a dangerous condition. *Id.* at 5–6.

[81] As described in the ID, the '279 patent generally describe woodworking safety systems that include an actuator designed to move a moveable component in order to mitigate injury in response to detection of a dangerous condition. *Id.* at 6.

[82] IEc, 2016a at 19.

[83] SawStop and Griggio, an Italian manufacturer collaborated to develop a sliding table saw. IEc, 2016a at 18.

[84] *Id.*

[85] OMB, 2003. Circular A–4, available at: *https://www.whitehouse.gov/omb/circulars_a004_a-4.*

effect, be reducing their competitiveness relative to the patent holder receiving the royalties. Consequently, the royalty transfers represent an impact of the proposed rule that needs to be considered, and staff has evaluated the potential costs of royalties as discussed in Table 12.

b. Redesign Costs

Interviews with several manufacturers, as well as a review of public comments provided by PTI to the ANPR, revealed general agreement that implementing a rule requiring AIM technology would necessitate a complete redesign of all saws that do not currently incorporate the AIM technology. More specifically, the trunnion system would have to be redesigned, and the cabinet/interior of the saw would need to be modified to incorporate the technology and allow access to change out the brake cartridge or to allow clearance for blade retraction.[86] The support structure, such as the stand, would also likely need to be redesigned to bear the extra weight of the AIM system and to absorb the force applied by the triggering of the AIM mechanism. PTI estimates that the cost to redesign and retool existing table saws would range from $2 million to $10 million per company.[87]

SawStop has indicated that SawStop's tooling costs were approximately $200,000 for its first cast iron (*i.e.,* contractor/cabinet) table saw, and were approximately $700,000 for its first benchtop table saw.[88] SawStop's estimates are within the range of estimates provided by other firms. In interviews with manufacturers, several companies indicated the cost to redesign saws could be approximately $500,000 per saw.[89] One company indicated that retooling could cost $100,000 to $200,000. An additional cost of several hundred thousand dollars may be necessary depending on the level of engineering required for the redesign. For example, according to one company, a redesign of the trunnion system alone may cost $200,000.

Several companies suggested that the redesign and retooling of table saws would, at least on the initial models, be expected to take one to three years. However, redesigning and retooling subsequent models would require a shorter period and cost less. Four small firms interviewed indicated that the cost of redesigning their saws to incorporate AIM technology may be too great, relative to their sales volume, to support such a redesign. They indicated that they might respond by reducing or eliminating their offerings of table saws to the U.S. market.[90]

c. Material Costs

In addition to the redesign and tooling costs, additional costs would result from the additional components and the increased use of raw materials associated with inclusion of the AIM system. For SawStop models, the additional costs associated with the AIM system is approximately $58 (including brake cartridge, cartridge key, cartridge cable, cartridge bracket, insulation on arbor, electrode shell assembly, and power supply/motor control). An estimate from another firm suggested $74 (including cartridge, electronics, and mechanical parts).

The AIM technology also will affect the weight of the table saws, adding to material costs. Although the added weight is applicable to all table saws equipped with the AIM technology, the added weight will particularly affect the bench saws, which typically can be transported by a single person. Currently, the lightest bench saws weigh 35 to 40 pounds. While the various components needed for AIM compliance may only weigh a few pounds, the structure of some saws may need to be strengthened to be stable and to withstand the shock of blade braking and/or retraction if those methods are used. This need for strength may contribute substantially to the added weight of some complying saws. Adding the AIM technology effectively could double the weight of some of the lightest saws, reducing the portability and utility of lightweight bench saws.

D. Unit Manufacturing Cost Impact

1. Low-End Manufacturing Costs

For bench saws, SawStop has indicated that retail prices for bench saws would increase by no more than $150 per unit as result of the rule.[91] Dr. Gass estimates that in the short-term (*i.e.,* within the first five years following the promulgation of the rule), the cheapest saws available (*i.e.,* inexpensive bench saws that currently cost about $150) will have a price of approximately $299. Thus, SawStop projects a short term cost increase of about $150. In the absence of more specific information about manufacturing costs, CPSC staff uses this figure as the basis for the low-end estimate of manufacturing cost increases for bench saws.

For contractor and cabinet saws, the low-end expected cost impacts were based on discussions with other industry members. One manufacturer estimated that the retail price of the single table saw model that they produce would increase by about 30 percent as a result of the rule, including the cost of royalties. Excluding royalties, this estimate suggested a cost increase associated with redesign, retooling, and materials of about $256.[92] For this analysis, we assume that this $256 low-end cost increase can be applied to all contractor and cabinet saws.

2. High-End Manufacturing Costs

For bench saws, the high-end cost increase is based on information provided by PTI, whose members produce primarily bench saws. PTI estimates that the increase would be $100 to $800 per saw, excluding royalties.[93] In the absence of more specific estimates, CPSC staff uses the midpoint of this range, $450 per saw, as the short-term high-end estimate for bench saws.

For contractor and cabinet saw models, we apply the high-end of the range estimated by PTI and other manufacturers. One table saw manufacturer provided an estimate ranging from $500 to $800 for ''larger saws,'' excluding royalties. Another manufacturer estimated that the retail price of saws would increase 20 percent, excluding the cost of royalties.[94] Applying this percentage to the company's cabinet saw models results in added costs of about $260 to $800. Consequently, CPSC staff assumes the high-end incremental cost increase is $800, the upper bound of each range suggested by PTI and these two manufacturers. In the longer term, after about five years, we would expect that the incremental cost would decrease, though the magnitude of such a decrease is uncertain.

3. Replacement Part Costs

In addition to the direct costs of the rule just described, there also will be the added costs of replacement parts related to the AIM system. For purposes of our analysis, we base the cost of replacement parts on the SawStop system, which requires replacement of the brake cartridge and blade after an

[86] A trunnion is an assembly that holds a saw's arbor to the underside of the saw table.

[87] Graham, J. 2010. *Expert report of Dr. John D. Graham.* (April 27). Submitted with the PTI public comments (2012) CPSC–2011–0074–1106, available at: *regulations.gov.*

[88] SawStop Comment to the ANPR, *supra* note 50.

[89] IEc, 2016a at 20.

[90] *Id.*

[91] SawStop, LLC. 2009. Presentation to CPSC, December 8 & 9. See also, *Osorio* v. *One World Technologies, Inc.,* 659 F.3d 81, 83 (1st Cir. 2011).

[92] IEc, 2016b at 11–12.

[93] *Id.* at 12.

[94] *Id.*

activation of the system. Replacement part prices are estimated to include $69 for a replacement brake cartridge (based on current online prices), and $30 to $90 for a replacement blade. Based on sales of replacement brake cartridges, SawStop estimates that the AIM system may activate about once every nine years of use.[95] At a replacement rate of once every nine years (and assuming $60 per replacement blade), this results in an annual per-unit replacement part cost of approximately $14 [($69 + $60) ÷ 9]. However, because blades depreciate and would require periodic replacement even in the absence of an AIM activation, we assume that the need for replacement blades due to an activation costs an average of about $30 every nine years (rather than $60), for an average of about $11 annually [($69 + $30) ÷ 9]. The present value of this expected annual cost of $11 over the life of a typical table saw, and discounted at a rate of 3 percent, would amount to about $94 for bench saws (with a 10-year expected product life), $145 for contractor saws (with an estimated 17-year product life), and $186 of cabinet saws (with an expected 24-year product life). With a discount rate of 7 percent, the present value of expected costs would amount to about $77, $107, and $126 for bench, contractor, and cabinet saws, respectively. For purposes of this cost analysis, we use the midpoint of this range. Hence, we estimate that replacement parts costs for the AIM system would amount to about $86 for bench saws, $126 for contractor saws, and $156 for cabinet saws.

Additionally, the Bosch REAXX™ bench saws, introduced on June 1, 2016, use a $100 cartridge that lasts for two activations. Since the blade is not destroyed by the activation, the Bosch system has lower replacement part costs. However, staff does not have any information on how frequently the cartridge will be activated. If, however, the Bosch cartridge activates once every nine years, based on the SawStop experience, and the cost is $100 for two activations, then the expected annual per-unit replacement cost would be about $5.55 annually (($100/2) ÷ 9). The present value of this expected annual cost of $5.55 over an average product life of 10 years for a bench saw (discounted at a rate of 3 percent) would amount to about $47 per saw, about half the expected costs of the SawStop system. Additionally, the Bosch system does not require any additional dado hardware related to the AIM system. Consequently, if the Bosch REAXX™ stays in the market, our baseline estimates of replacement costs might be reduced.

The direct manufacturing and replacement costs are presented in Table 11, and rely on the low- and high-end direct manufacturing costs and the SawStop replacement costs as described.[96]

TABLE 11—DIRECT MANUFACTURING AND REPLACEMENT COSTS

Table saw type	Direct manufacturing costs		Replacement parts costs	Total direct + replacement costs	
	Low-end estimates	High-end estimates		Low-end estimates	High-end estimates
Bench	$150	$450	$86	$236	$536
Contractor	256	800	126	382	926
Cabinet	256	800	156	412	956

Based on the available information, there is considerable uncertainty concerning the per unit manufacturing cost impact of a rule requiring the use of AIM technology on table saws. Accordingly, the Commission seeks any comments that would allow us to make more precise estimates or narrow the range we present regarding the unit manufacturing cost impact of a rule requiring the use of AIM technology on table saws.

4. Impact on Product Usability

The AIM technology will also affect the weight of the table saws, adding to material costs. While the added weight is applicable to all table saws equipped with the AIM technology, the added weight will particularly affect bench saws, which, as currently configured, typically can be transported by a single person. Currently, the lightest bench saws weigh 35 to 40 pounds. While the various components needed for AIM compliance may only weigh a few pounds, the structure of some saws may need to be strengthened to be stable and to withstand the shock of blade braking and/or retraction if those methods are used. This need for strength may contribute substantially to the added weight of some complying saws, perhaps as much as an 18 pound increase.

An additional four or five pounds is not a major weight penalty on a forty pound bench saw, but an 18 pound increase would reduce portability. An additional 20 pounds (on top of the 18 pounds) for a more substantial jobsite saw type structure, if necessary, would further decrease portability. For contractor saws, with wheels and stands, the weight penalty would not be substantial. Cabinet saws are not portable at all, so the weight penalty may make no real difference. However, adding the AIM technology could effectively double the weight of some of the lightest saws, reducing the portability and utility of lightweight bench saws. The Commission seeks public comments on the impact of the AIM technology on the utility of table saws, and possible methods of quantifying these impacts.

E. Impact of Higher Prices on Sales and Lost Consumer Surplus

The increasing retail prices of table saws, as costs are passed on to consumers, will result in a reduction in table saw sales. As a consequence, and in addition to the price impacts on consumers who continue to purchase saws, consumers who decide not to purchase table saws because of the higher prices will experience a loss in consumer surplus. For purposes of this analysis, we assume that cost increases as well as royalties are pushed forward to consumers. Table 12 provides baseline sales and median retail price estimates,[97] along with the total per

[95] *Id.* at 13.

[96] The SawStop AIM system has optional hardware to perform dado cuts which includes an $89 dado brake cartridge. This dado brake system is not included in Table 11.

[97] Retail price information was collected for all of the table saw models available. However, we were unable to calculate a weighted average retail price for each category of saw because we do not have sales information for the various models. Consequently, we apply the median price advertised for each category as baseline pre-regulatory retail prices.

product compliance cost estimates, including both the costs associated with manufacturing the redesigned table saws and the expected costs of replacement parts over the expected product life of a table saw. Table 12 also provides an estimate of the expected royalty fee, under the assumption, based on Dr. Gass's statements, that the fee would amount to 8 percent of a saw's wholesale price.[98] The per unit cost and royalty fee estimates are provided for both the low-end and high-end cost estimates.

TABLE 12—BASELINE ANNUAL TABLE SAW SHIPMENTS, RETAIL PRICES, AND PER UNIT COMPLIANCE COST ESTIMATES AND ROYALTY FEES

Table saw type	Pre-regulatory baseline estimates		Per unit cost estimates *		Per unit royalty fees	
	Shipments **	Median price (per unit)	Low-end estimates (% of baseline)	High-end estimates (% of baseline)	Low-end cost estimates	High-end cost estimates
Bench	499,000	$400	$236 (59.0%)	$536 (134%)	$37	$57
Contractor	133,000	1,225	$382 (31.2%)	$926 (75.6%)	99	135
Cabinet	33,000	2,550	$412 (16.2%)	$956 (37.5%)	187	223

* Includes direct manufacturing and replacement part costs.
** Excludes 10,000 units assumed to contain the AIM technology

Table 13 shows the expected reduction in annual sales as well as the expected lost consumer surplus. Reduced sales could range from 93,400 table saws under the low-end cost estimates (column a) to about 251,700 under the high-end cost estimates (column d), a sales reduction of about 14.0 percent to 37.8 percent, respectively. The annual loss in consumer surplus ranges from about $10.0 million under the low cost estimates (column c), to about $72.3 million, under the high cost estimates (column f).

TABLE 13—AGGREGATE EXPECTED POST-REGULATORY ANNUAL TABLE SAW SALES, SALES REDUCTION, AND LOST CONSUMER SURPLUS, BY COST LEVEL AND TABLE SAW TYPE

Table saw type	Low-end cost estimate			High-end cost estimate		
	Expected sales reduction	Expected post-regulatory sales	Aggregate lost consumer surplus (millions $)	Expected sales reduction	Expected post-regulatory sales	Aggregate lost consumer surplus (millions $)
	(a)	(b)	(c)	(d)	(e)	(f)
Bench	$78,500	$420,500	$7.3	$213,000	$286,000	$54.0
Contractor	13,000	120,000	2.3	34,200	98,800	16.0
Cabinet	1,900	31,100	0.4	4,500	28,500	2.3
Total	93,400	571,600	10.0	251,700	413,300	72.3

Table 14 presents the total costs per table saw, including both the direct manufacturing costs, replacement part costs, and the lost consumer surplus. The lost consumer surplus, per table saw, is calculated as the aggregate lost consumer surplus (from Table 13, columns c and f) divided by the post-regulatory estimate of sales (Table 13, columns b and e). Total per unit costs range from roughly $253 to $725 per bench saw to roughly $400 to $1,000 per unit for contractor and cabinet saws.

TABLE 14—TOTAL COSTS OF THE PROPOSED RULE, PER TABLE SAW, BY COST LEVEL AND TABLE SAW TYPE

Table saw type	Low-end cost estimates, per table saw			High-end cost estimates, per table saw		
	Direct + replacement costs	Lost consumer surplus	Total (a) + (b)	Direct + replacement costs	Lost consumer surplus	Total (d) + (e)
	(a)	(b)	(c)	(d)	(e)	(f)
Bench	$236	$17	$253	$536	$189	$725
Contractor	382	19	401	926	162	1,088

[98] IEc, 2016b at 14. Staff also spoke with Dr. Gass on November 26, 2015, who indicated that SawStop would accept royalty payments of 8 percent of a saw's wholesale value if a rule is mandated requiring AIM technology on all table saws.

TABLE 14—TOTAL COSTS OF THE PROPOSED RULE, PER TABLE SAW, BY COST LEVEL AND TABLE SAW TYPE—Continued

Table saw type	Low-end cost estimates, per table saw			High-end cost estimates, per table saw		
	Direct + replacement costs (a)	Lost consumer surplus (b)	Total (a) + (b) (c)	Direct + replacement costs (d)	Lost consumer surplus (e)	Total (d) + (e) (f)
Cabinet	412	13	425	956	81	1,037

The annual aggregate costs of the rule are estimated in columns (c) and (f) of Table 15, and range from about $170 million based on our low-end cost estimates, to about $345 million based on our high-end cost estimates. Bench table saws account for about 63 percent of the total under the low-end annual cost estimates and about 60 percent of the costs under the high-end estimates.

TABLE 15—ANNUAL POST-REGULATORY SALES, PER UNIT COST ESTIMATES, AND AGGREGATE ANNUAL COSTS OF THE PROPOSED RULE, BY COST LEVEL AND TABLE SAW TYPE

Table saw type	Low-end cost estimates			High-end cost estimates		
	Annual post-regulatory table saw sales (a)	Per unit costs (direct costs + replacement costs + lost consumer surplus) (b)	Aggregate costs (millions $) (a) × (b) (c)	Annual post-regulatory able saw sales (d)	Per unit costs (direct costs + replacement costs + lost consumer surplus) (e)	Aggregate costs (millions $) (d) × (e) (f)
Bench	$420,500	$253	$106.4	$286,000	$725	$207.4
Contractor	120,000	401	48.1	98,800	1,088	107.5
Cabinet	31,100	425	13.2	28,500	1,037	29.6
Total	571,600	.....	167.7	413,300	.....	344.5

Over time, we would expect the costs of the AIM technology to decrease. If, for example, we assume that the annual aggregate costs remain constant for years 1 through 5, but decline by about one-third in years 6 through 10, the present value of the aggregate costs over 10 years (using a 3 percent discount rate) would range from about $1,200 million to $2,500 million; on an annualized basis, this would amount to about $140 million to $290 million annually. Alternatively, if annual aggregate costs remain constant for years 1 through 5, but decline by about two-thirds in years 6 through 10, the present value of the aggregate costs over 10 years (using a 3 percent discount rate) would range from about $990 million to $2,000 million; on an annualized basis, this would amount to about $120 million to $240 million.

F. Benefit-Cost Findings

The expected benefits and costs of the proposed rule, are presented and compared in Table 16. The estimated benefits per table saw are provided in rows (a) and (b). The estimated costs per table saw are shown in rows (c) and (d). Cost estimates were developed from Table 15; they represent the average lower and upper bound cost estimates, weighted by projected sales. Net benefits per table saw are estimated in rows (e) and (f), and range from about $2,500 to $4,000 with a 3 percent discount rate and about $1,500 to $2,700 at 7 percent.

TABLE 16—ESTIMATES OF BENEFITS, COSTS AND NET BENEFITS, BY TABLE SAW

[2014 dollars]

Categories	Discount rate		Row
	3 Percent	7 Percent	
Estimates per Table Saw, Over Its Expected Product Life			
Expected Benefits per Table Saw:			
70% Effective	$3,335	$2,345	(a)
90% Effective	$4,288	$3,015	(b)
Expected Costs per Table Saw:			
Lower Bound Cost Estimates	$293	$293	(c)
Higher Bound Cost Estimates	$833	$833	(d)
Range of Expected Net Benefits per Table Saw:			
(a) − (d)	$2,502 to	$1,512 to	(e)

TABLE 16—ESTIMATES OF BENEFITS, COSTS AND NET BENEFITS, BY TABLE SAW—Continued

[2014 dollars]

Categories	Discount rate		Row
	3 Percent	7 Percent	
(b) − (c)	$3,995	$2,722	(f)
Expected Annual Sales			
Low Cost Estimate	$571,600	571,600	(g)
High Cost Estimate	$413,300	413,300	(h)
Aggregate Annual Estimates, Based on One Year of Sales			
Range of Expected Benefits (Millions $):			
(a) + (h)	$1,378 to	$969 to	(i)
(b) + (g)	$2,450	$1,723	(j)
Range of Expected Costs (Millions $):			
(c) × (g)	$168 to	$168 to	(k)
(d) × (h)	$344	$344	(l)
Range of Expected Net Benefits (Millions $):			
(i) − (l)	$1,034 to	$625 to	(m)
(j) − (k)	$2,282	$1,555	(n)

Given table saw sales estimates, shown in rows (g) and (h) of Table 16, we can provide aggregate annual estimates of the benefits and costs of the proposed rule. As shown in rows (i) and (j), estimates of aggregate annual benefits range from about $970 million to $2,450 million, and aggregate costs, shown in rows (m) and (n), range from about $170 million to about $345 million. Aggregate net benefits, from rows (m) and (n), range from about $1,030 million to $2,280 million with a 3 percent discount rate, and from about $630 million to $1,560 million at 7 percent.

G. Sensitivity Analysis

The benefit-cost analysis described our methodology and the results of our reference case analysis. This section presents an analysis to help evaluate the sensitivity of the results to variations in some of the key parameters and assumptions of the analysis. Such an analysis is needed to account for uncertainty in the values of the input variables. The variables CPSC staff examines include: (1) The expected product life of table saws, (2) the number of table saws in use, (3) the national estimate of medically treated injuries involving table saws, and (4) our estimates of injury costs.

Relative to the reference case analysis, the sensitivity analysis allows: The expected product life of table saws to vary by about 20 percent; the number of table saws in use to vary by 25 percent; and the national estimate of medically treated injuries by the upper and lower bounds of an approximate 95 percent confidence interval. Finally, we evaluate the results of the analysis when benefits are limited to the economic costs of injury (*i.e.,* medical costs and work loss), and the intangible costs associated with pain and suffering are excluded. This exclusion of pain and suffering is not intended to suggest that the intangible costs are not important; rather it simply shows the impact of limiting the costs to the economic losses associated with medical costs and work losses.

Table 17 describes the results of the sensitivity analysis. Only changes in *net benefits* per table saw are shown in the table. Aside from changing the input variables, the methodology used to estimate net benefits in the sensitivity analysis was identical to that presented in the reference case analysis shown in Table 16.

Variations in the expected product life of the table saws had a relatively small impact on net benefits (See Table 17, Part B, rows b and c). A longer expected product life reduces societal costs per table saw on an annual basis (because there would be more saws in use), but increases the number years over which benefits are accumulated in the present value calculation. Conversely, a shorter expected product life increases the annual societal costs per table saw (because there would be fewer saws in use), but decreases the number of years over which the benefits are accumulated. In all cases, net benefits remained positive and significant, and roughly equal to estimates from the reference case.

Variations in the number of saws in use, which might result if sales were systematically under- or over-estimated, had a somewhat greater impact on net benefits (Table 17, Part B, rows d and e). Net benefits rose when fewer saws were assumed to be in use, because injury costs were apportioned over a smaller population of saws; conversely, net benefits decreased when more saws were assumed to be in use. Nevertheless, net benefits remained positive.

TABLE 17—SENSITIVITY ANALYSIS: EXPECTED NET BENEFITS ASSOCIATED WITH VARIATIONS IN INPUT VALUES

Row	Input value	Range of expected net benefits per table saw, by discount rate	
		3 Percent	7 Percent
Part A: Reference Case Results.*			
a	Reference Case Analysis * (Rows (i) and (j) from Table 16)	$2,502 to $3,995	$1,512 to $2,722.
Part B: Alternative Inputs for Sensitivity Analysis			
Row	Input variable and value(s) used in sensitivity analysis	Range of expected net benefits by discount rate	
		3 Percent	7 Percent
Expected Product Life (years)			
b	Lower expected product life: 10.8 years	2,817 to 4,400	1,834 to 3,136.
c	Higher expected product life: 16.2 years	2,502 to 3,995	1,414 to 2,596.
Saws in Use			
d	25% fewer saws in use: 6.1 million	3,651 to 5,472	2,319 to 3,760.
e	25% more saws in use: 10.3 million	1,822 to 3,121	1,034 to 2,107.
Medically Treated Injuries (per year)			
f	Approximate lower 95% CI: 45,150	1,914 to 3,239	1,098 to 2,190.
g	Approximate upper 95% CI: 64,500	3,088 to 4,749	1,924 to 3,252.
Exclusion of Pain and Suffering Estimates from Injury Costs			
h	Medical costs and work losses only, excluding imputed costs of pain and suffering..	279 to 1,136	−52 to 711.

* Reference Case Inputs: 3% discount rate; expected product life, 13.3 years; saws in use, 8.2 million; medically treated blade-contact injuries, 54,843 per year; including100% of pain and suffering estimates in injury cost calculation.

Variations in the national estimate of medically treated injuries (rows f and g), were based on the lower and upper bounds of an approximate 95 percent confidence interval, based on estimates the coefficient of variation (CV) from the NEISS injury estimates. The upper bound estimates increased net benefits substantially, as would be expected, while the lower bound estimates lowered them.

Finally, net benefits were significantly reduced when benefits were limited to the reduction in economic losses associated with medical costs and work losses, excluding the intangible costs associated with pain and suffering (Table 17, Part B, row h). Reductions in pain and suffering accounted for about 70 percent of the societal costs associated with blade-contact injuries. Nevertheless, although net benefits appear to have remained positive using a 3 percent discount rate, benefits were generally comparable to costs when a 7 percent discount rate was applied.

H. Breakeven Analysis

The preceding analysis evaluated the expected benefits and costs of the proposed rule over the table saw market as a whole, combining all of the saw types into a single category. However, because we had no information on the distribution of injuries by saw type, we were unable to evaluate the relationship between benefits and costs for each of the three major saw categories: Bench saws, contractor saws, and cabinet saws.

Such a detailed analysis of benefits and costs, by saw type, is useful because the saw types have different physical characteristics and different patterns of usage. Contractor saws, in general, are heavier, less mobile, and more expensive than bench saws; similarly, cabinet saws are heavier, less mobile, and more expensive than contractor saws. Some types of table saws may be used more frequently or more intensively than others. Contractor and cabinet saws may be more likely to be used by hobbyists or occupational users who may, relative to bench saw users, have more expertise or experience in the safe use of table saws.

On the other hand, many consumers use table saws only occasionally. These types of consumers may be less likely to fully understand table saw risks (*e.g.,* how quickly and unexpectedly kickback injuries can occur) or to remember safety procedures; they are also probably more likely to purchase the inexpensive bench saw models. Consequently, because of the different characteristics and potentially varying use patterns associated with the various saw types, it is possible that the costs of the proposed rule might exceed the benefits for one or more table saw types, even though, in aggregate (as shown above), benefits exceed aggregate costs for the market as a whole.

Although we cannot conduct a benefit-cost analysis of the individual saw types, we can evaluate the relationship between benefits and costs of the proposed rule by saw type. To do this, we will, for each saw type, estimate the number of injuries that would have to be prevented in order for benefits to equal or exceed the costs. This is called a breakeven analysis, and the number of injuries that would have to be prevented before benefits would equal costs can be called the breakeven estimate. We will then develop several hypothetical distributions of injuries across saw types, and compare the expected injury

reduction for each to the breakeven estimates. Table 18 shows the breakeven injury estimates, including hypothetical injury distributions and the expected injury reduction associated with one year of table saw sales, by table saw type.

CPSC staff applied the breakeven analysis to table saw sales from a single year to allow staff to calculate the breakeven injury estimate from information that we have already presented in this regulatory analysis. Staff also followed the single years' worth of table saw sales through their useful product lives to determine the expected number of injuries that would likely be prevented by the proposed rule.

TABLE 18—BREAKEVEN INJURY ESTIMATES AND THE EXPECTED INJURY REDUCTION ASSOCIATED WITH ONE YEAR OF TABLE SAW SALES, BY TABLE SAW TYPE

Row		Type of saw		
		Bench	Contractor	Cabinet
a	Breakeven Injury Estimates	1,437–3,116	650–1,615	178–445.
	Hypothetical Injury Distributions			
b	1. Every Saw Has the Same Annual Risk of Injury.			
c	Annual Risk per Saw	0.00669	0.00669	0.00669.
d	Estimated Annual Injuries	1,913–2,812	661–803	191–208.
e	Present Value of Annual Injury Estimate	13,435–23,990	6,451–10,567	2,186–3,323.
f	Present Value of Expected Injury Reduction*	8,330–19,192	4,000–8,454	1,355–2,818.
g	2. Equivalent risks for the saw types, over expected product life.			
h	Annual Risk per Saw	0.00808	0.00475	0.00337.
i	Estimated Annual Injuries	2,312–3,399	470–571	96–105.
j	Present Value of Annual Injury Estimate	16,237–28,993	4,586–7,512	1,101–1,774.
k	Present Value of Expected Injury Reduction*	10,067–23,194	2,843–6,010	682–1,419.
l	3. Injury Risks Proportional to the Median Saw Price.			
m	Annual Risk per Saw	0.00318	0.00974	0.02027.
n	Estimated Annual Injuries	910–1,337	962–1,169	578–631.
o	Present Value of Annual Injury Estimate	6,389–11,408	9,396–15,389	6,628–10,679.
p	Present Value of Expected Injury Reduction*	3,961–9,126	5,825–12,311	4,109–8,543.
q	4. Injuries are Proportional to Median Saw Price.			
r	Annual Risk per Saw	0.00103	0.00700	0.04187.
s	Estimated Annual Injuries	295–433	691–840	1,193–1,302.
t	Present Value of Annual Injury Estimate	2,070–3,696	6,749–11,054	13,687–22,053.
u	Present Value of Expected Injury Reduction*	1,283–2,957	4,184–8,843	8,486–17,642.

*Assumes 70 percent to 90 percent of the blade-contact injuries are prevented or mitigated by the proposed rule.

1. Calculation of the Breakeven Injury Estimates

Breakeven injury estimates are derived from: (1) The expected post-regulatory sales, and (2) the aggregate cost estimates, by saw type, presented in Table 15. For example, to calculate the breakeven injury estimate for bench saws, we begin with the aggregate cost estimates of $106.4 million to $207.4 million. The $106.4 million was based on our lower bound cost estimate for bench saws (annual sales of 420,500 bench saws × $253 cost per bench saw) and $207.4 million was based on our upper bound cost estimate (annual sales of 286,000 bench saws × $725 cost per bench saw).

If we divide these aggregate cost estimates by the average cost per injury (*i.e.,* $74,050 with a 3 percent discount rate and $66,550 at 7 percent), we can estimate a range of injuries that would have to be prevented for benefits to equal or exceed costs. For bench saws, using a 3 percent discount rate, the breakeven estimates range from 1,437 injuries ($106.4 million ÷ $74,050) to 2,801 injuries ($207.4 million ÷ $74,050). Using a 7 percent discount rate, the breakeven estimates range from about 1,599 injuries ($106.4 million ÷ $66,550) to about 3,116 ($207.4 million ÷ $66,550). If, for simplicity, we combine these ranges, we have an overall breakeven range from about 1,437 (based on the lower bound cost estimate injury costs discounted at 3 percent) to 3,116 injuries (based on the upper bound cost estimate and injury costs discounted at 7 percent).

This breakeven estimate means that if the proposed rule could prevent at least 1,437 to 3,116 bench saw injuries over the expected product life of one years' production and sale of bench saws, then the benefits of the proposed rule would equal or exceed the costs for that saw type. Using the same methodology, the breakeven injury estimate for contractor saws ranges from 650 to 1,615, and the breakeven estimate for cabinet saws ranges from 178 to 445. CPSC staff notes that throughout this breakeven analysis, we are implicitly assuming that the types of injuries experienced, and hence the societal costs, are the same across the three types of table saws. However, in reality, the distribution of injuries and the resulting societal costs, by saw type, are likely to vary.

2. Hypothetical Blade-Contact Injury Distributions

Because we have no information on the actual distribution of blade-contact injuries across saw types, CPSC staff considered four hypothetical distributions. The first assumes that injuries are proportional to saws in use, and that every table saw has an equal likelihood of injury on an annual basis. Thus, the risk for a bench saw, over the course of a year, is equal to the risk for

contractor and cabinet saws. Because the present value of the expected injury reduction for bench saws (8,330 to 19,192; row f) exceeds the breakeven range (1,437 to 3,116; row a), we can say that the benefits are very likely to exceed the costs for bench saws for this hypothetical injury distribution. Additionally, the present value of prevented injuries ranges from 4,000 to 8,454 injuries for contractor saws and 1,355 to 2,818 injuries for cabinet saws. Because the present value of each of these ranges exceeds the breakeven range (650–1,615 for contractor saws and 178–445 for cabinet saws), we can say that, for this distribution of injuries, the estimated benefits of the proposed rule are likely to exceed the costs for all three table saw types.

The second hypothetical injury distribution assumes that the risks for the saw types are equal to one another over their expected product lives. Consequently, given the expected product life of about 10 years for bench saws, 17 years for contractor saws, and 24 years for cabinet saws, the annual risk for contractor saws would, on an annual basis, be about 59 percent (10 years ÷ 17 years) of the risk for bench saws, and the risk for cabinet saws would be about 42 percent (10 years ÷ 24 years) of the risk for bench saws. Given the distribution of an estimated 8.2 million table saws currently in use by saw type, this hypothetical injury distribution would suggest that about 75.2 percent of the 54,843 blade-contact injuries in 2015 involved bench saws, 19.9 percent involved contractor saws, and 4.9 percent involved cabinet saws. This injury distribution suggests increased injury risk for bench saws but lower risks for contractor and cabinet saws (row h). Nevertheless, the present value of injuries prevented (row k) would continue to exceed the breakeven levels (row a).

Our third hypothetical injury distribution assumes that the blade contact risk for the three table saw types is proportional to their median retail prices. Given the median retail prices (*i.e.,* $400 per bench saw, $1,225 per contractor saw, and $2,550 per cabinet saw), the annual risk on a contractor saw would be about 3.06 times the risk for a bench saw (*i.e.,* $1,225 ÷ $400) and the annual risk on a cabinet saw would be about 6.37 times the risk for a bench saw (*i.e.,* $2,550 ÷ $400). Given the distribution of the estimated 8.2 million table saws currently in use by saw type, this hypothetical injury distribution would suggest that about 29.6 percent of the 54,843 blade-contact injuries in 2015 involved bench saws, 40.8 percent involved contractor saws, and 29.6 percent involved cabinet saws. Relative to the first two hypothetical injury distributions, this injury distribution would suggest that injury risks are lower on bench saws, but higher on contractor and cabinet saws (row m). The results suggest that the present value of injuries prevented (row p) would exceed the breakeven levels.

Whereas the third hypothetical injury distribution suggested that *injury risks* were proportional to median prices, our fourth hypothetical injury distribution assumes that estimated *blade-contact injuries,* by table saw type, are proportional to the median retail prices. Consequently, the annual number of blade-contact injuries on contractor saws would be about 3.06 times the number on bench saw injuries, and the number of injuries on cabinet saws would be about 6.37 times the number on bench saws. Given the distribution of the estimated 8.2 million table saws currently in use by saw type, this hypothetical injury distribution would suggest that about 9.6 percent of the 54,843 blade-contact injuries in 2015 involved bench saws, 29.3 percent involved contractor saws, and 61.1 percent involved cabinet saws. Comparing the present value of the expected injury reduction (row u) with the breakeven injury estimates (row a) suggests that the expected injury reduction would exceed the breakeven level. However, for bench saws, the present value of injury reduction (1,283 to 2,957) appears to be generally comparable to, or slightly lower than, the breakeven level (1,437 to 3,116).

3. Sensitivity Analysis of Breakeven Results

The breakeven analysis evaluated four hypothetical injury distributions, and found (for the most part) that the expected injury reduction for each of the saw types substantially exceeded the breakeven estimates, regardless of the hypothesized injury distribution. The CPSC staff also conducted a sensitivity analysis of the breakeven results by allowing variation in some key parameters and assumptions underlying the analysis, including variations in the number of table saws in use, the national estimate of medically treated injuries, and estimates of injury costs. Results are presented in Table 19, which shows the *present value of the expected injury reduction* for the four injury distributions presented in Table 18, when estimates of the number of Tables saws (by type) were either 25 percent lower or 25 percent higher than in the base analysis and when estimates of medically treated injury estimates were set equal to the lower and higher bounds of an approximate 95 percent confidence interval, based on the coefficient of variation from the NEISS blade-contact injury estimates.

As suggested by rows (b) through (p) of Table 19, the present value of the expected injury reductions from the first three hypothetical injury distributions remain uniformly higher than the breakeven estimates (row a), as do the projected injury reductions for contractor and cabinet saws from the fourth hypothesized injury distribution (rows q through u). However, considering bench saws from the fourth injury distribution, the present value injury estimates appear to be generally comparable, or marginally lower, than the breakeven injury estimates when: (1) The estimate of bench saws in use was assumed to be 25 percent higher than the reference case (row s); and (2) when bench saw injuries were estimated at the lower bound of an approximate 95 percent confidence interval for medically treated injuries (row t).

TABLE 19—SENSITIVITY ANALYSIS FOR BREAKEVEN RESULTS

Row		Type of saw		
		Bench	Contractor	Cabinet
a	Breakeven Injury Estimates	1,437–3,116	650–1,615	178–445
Hypothetical Injury Distributions and Present Values for Expected Injury Reductions, Conditional on the Described Input Variation				
b	1. Every Saw Has the Same Annual Risk of Injury.			
c	25% fewer Table Saws in Use	11,106–25,590	5,333–11,271	1,807–3,758
d	25% more Table Saws in Use	6,664–15,354	3,200–6,762	1,084–2,254
e	Lower bound Estimate of Medically Treated Injuries	6,860–15,806	3,294–6,962	1,117–2,320

TABLE 19—SENSITIVITY ANALYSIS FOR BREAKEVEN RESULTS—Continued

Row		Type of saw		
		Bench	Contractor	Cabinet
f	Upper bound Estimate of Medically Treated Injuries	9,799–22,578	4,705–9,945	1,595–3,315
g	2. Equivalent Risks for the Saw Types, Over Expected Product Life.			
h	25% fewer Table Saws in Use	13,420–30,920	3,791–8,011	910–1,892
i	25% more Table Saws in Use	8,052–18,552	2,274–4,807	595–1,135
j	Lower bound Estimate of Medically Treated Injuries	8,291–19,104	2,342–4,950	562–1,169
k	Upper bound Estimate of Medically Treated Injuries	11,843–27,287	3,346–7,070	803–1,670
l	3. Injury Risks Proportional to the Median Saw Price.			
m	25% fewer Table Saws in Use	5,281–12,169	7,767–16,414	5,479–11,391
n	25% more Table Saws in Use	3,168–7,310	4,660–10,089	3,287–6,834
o	Lower bound Estimate of Medically Treated Injuries	3,262–7,517	4,798–10,139	3,384–7,036
p	Upper bound Estimate of Medically Treated Injuries	4,660–10,736	6,853–14,482	4,834–10,050
q	4. Injuries are Proportional to the Median Saw Price.			
r	25% fewer Table Saws in Use	1,710–3,942	5,579–11,790	11,314–23,523
s	25% more Table Saws in Use	1,027 –2,364	3,347–7,074	6,788–14,114
t	Lower bound Estimate of Medically Treated Injuries	1,057–2,435	3,446–7,283	6,989–14,530
u	Upper bound Estimate of Medically Treated Injuries	1509–3,477	4,922–10,402	9,982–20,754

The CPSC staff also considered the sensitivity of the results to the exclusion of the intangible costs associated with the pain and suffering. The staff is not suggesting that the intangible costs are unimportant; rather the analysis simply shows the impact of limiting the costs to the economic losses associated with medical costs and work losses. By implicitly reducing injury costs, we are in effect changing the breakeven estimates which, were estimated as the quotient of aggregate injury costs for each type of saw divided by the average injury cost. Using a 3 percent discount rate, and excluding the pain and suffering component, the average injury cost would be reduced from about $74,050 to $21,900; using a 7 percent discount rate, the average injury cost would be reduced from about $66,550 to $17,300. Consequently, following the bench saw example discussed earlier, the breakeven estimate, excluding the intangible costs associated with pain and suffering, would range from 4,854 injuries (106.4 million ÷ $21,900) to 9,461 injuries ($207.4 million ÷ $21,900) when discounted at 3 percent. When discounted at 7 percent, the breakeven estimate would range from 6,150 injuries ($106.4 million ÷ $17,300) to 11,994 injuries ($207.4 million ÷ $17,300). Thus, for bench saws, the overall range for the breakeven injury estimate is 4,854 to 11,994 injuries. Using the same methodology, the breakeven injury estimate for contractor and cabinet saws would range from 2,194 to 6,217 and 602 to 1,711, injuries respectively.

The breakeven injury estimates for the three types of saws, excluding pain and suffering, are presented in Table 20 and compared to the present value of the expected injury reductions developed in Table 18.

TABLE 20—BREAKEVEN INJURY ESTIMATES (EXCLUDING PAIN AND SUFFERING) AND THE PRESENT VALUE OF EXPECTED INJURY REDUCTIONS ASSOCIATED WITH ONE YEAR OF TABLE SAW SAWS, BY TABLE SAW TYPE

Row		Type of saw		
		Bench	Contractor	Cabinet
a	Breakeven Injury Estimates	4,854–11,988	2,194–6,214	602–1,711
	Hypothetical Injury Distributions			
b	1. Equivalent Risks for the Saw Types, on an Annual Basis.			
c	Present Value of Expected Injury Reduction	8,330–19,192	4,000–8,454	1,255–2,818
d	2. Equivalent Risks for the Saw Types, Over Expected Product Life.			
e	Present Value of Expected Injury Reduction	10,067–23,194	2,843–6,010	682–1,419
f	3. Injury Risks Proportional to the Median Saw Price.			
g	Present Value of Expected Injury Reduction	3,961–9,126	5,825–12,311	4,109–8,543
h	4. Injuries are Proportional to Median Saw Price.			
i	Present Value of Expected Injury Reduction	1,283–2,957	4,184–8,843	8,486–17,642

The results suggest that, even without the pain and suffering component, the expected injury reduction would exceed the breakeven estimates for most of the saw types and injury distributions. However, there were several exceptions. First, the present value of the expected injury reduction was generally comparable to the breakeven injury estimates for contractor and cabinet saws under the second hypothetical injury distribution (row e). Second, the present value estimates were generally comparable to, or slightly less than, the breakeven estimates for bench saws

under the third hypothetical injury distribution (row g). And third, the present value estimates were lower than the breakeven estimates for bench saws under the fourth hypothetical injury distribution (row i).

Staff's analysis shows, that, for the most part, the sensitivity analysis of the breakeven estimates indicated that estimates of the present value of the expected injury reduction were either comparable to or substantially exceeded the breakeven injury estimates for the various saw types and across all of the hypothetical injury distributions. The primary exception involved bench saws under the fourth hypothetical injury distribution, in which the relative risk on cabinet saws was roughly 40 times the risk on a bench saw.

I. Summary of the Preliminary Regulatory Analysis

Based on CPSC staff's analysis, the proposed rule would address approximately 54,800 medically treated table saw blade-contact injuries that occur annually. The societal cost of these injuries, on the order of about $3.65 billion to $4.06 billion annually, represents the pool from which the benefits would be derived. Medical costs and work losses, the economic losses associated with these injuries, account for about 30 percent of the total; the intangible, or non-economic, costs associated with pain and suffering account for the remaining 70 percent of the total. We expect the proposed rule would prevent or substantially mitigate 70 percent to 90 percent of the medically treated blade-contact injuries.

CPSC staff's review also shows substantial net benefits (*i.e.,* benefits—costs) for the proposed rule. Estimates of net benefits, across all saw types, averaged about $1,500 to $4,000 per saw over its expected product life. Aggregate net benefits over approximately one year's production and sale of table saws could amount to about $625 million to about $2,300 million. Net benefits varied but generally remained positive in our sensitivity analysis.

Because we had no information on the distribution of injuries across saw types (*i.e.,* bench, contractor, and cabinet saws), CPSC staff was unable to compare directly the benefits and costs for each saw type. However, based on several assumptions discussed above and in TAB C of the staff briefing package, staff was able to conduct a breakeven analysis by estimating the approximate number of injuries that would have to be substantially mitigated for each type of saw for the benefits to equal or exceed the costs. This analysis suggested that, under most plausible injury distributions, the benefits likely would exceed the costs for each saw type.

Notwithstanding the high level of expected net benefits, the proposed rule also would be costly and would result in disruption of the table saw market. Under the rule, table saw manufacturers would need to develop their own AIM technology, without impinging on existing patents or license the patented AIM technology that already exists. Most, if not all, table saw models not already incorporating the AIM technology would require major design changes and the retooling of production facilities, a process that likely would take two or more years to accomplish. The cost impact of the proposed rule on market sales might also be substantial, potentially reducing aggregate sales by about 14 percent to 38 percent annually. In discussions between staff and manufacturers, several firms indicated that the cost of redesigning their saws to incorporate the AIM technology may be too great, relative to their sales volume, to support such a redesign. These firms indicated that they might respond by reducing or eliminating their offerings of table saws to the U.S. market.

Although the proposed rule would substantially reduce blade-contact injuries and the societal costs associated with those injuries, the impact of increasing table saw production costs on consumers also would be considerable. Staff expects that the prices for the least expensive bench saws now available could more than double, to $300 or more. In general, the retail prices of bench saws could increase by as much as $200 to $500 per unit, and the retail prices of contractor and cabinet saws could rise by as much as $350 to $1,000 per unit.[99] These higher prices may be mitigated in the longer run, but the extent of any future price reductions is unknown.

Additionally, because of the likely decline in sales following the promulgation of a rule, consumers who choose not to purchase a new saw due to the higher price will experience a loss in utility by forgoing the use of table saws, or because they continue to use older saws which they would have preferred to replace. There may also be some other utility impacts. The inclusion of the AIM technology will, for example, increase the weight and (potentially) the size of table saws to accommodate the new technology, to allow access to change the brake cartridge, and to mitigate the effects of the force associated with the activation of the brake cartridge. While this factor may have a relatively small impact on the heavier and larger contractor and cabinet saws, the impact on some of the smaller and lighter bench saws could markedly reduce their portability.

As discussed further below, the Commission also considered several alternatives to the proposed rule. These alternatives would mitigate the proposed rule's costs and potential disruptions in the marketplace. In particular, they could, individually or in combination, reduce the adverse impacts of the proposed rule on manufacturers (including small manufacturers), allow for greater choice in the types and safety characteristics of the table saws that consumers can purchase, reduce the impact of the proposed rule on table saws intended for commercial or professional use, and address the market failures resulting in the need for a product safety rule in the first place. However, these alternatives would reduce the expected benefits of the proposed rule. These alternatives are the same alternatives as those considered in the initial regulatory flexibility analysis in section XII of the preamble, and TAB D of the staff briefing package. Accordingly, any potential impacts of alternatives on small manufacturers are also addressed here in section XI.J.

J. Regulatory Alternatives

1. No Action Alternative

Under this alternative, the Commission would take no regulatory action and the status quo would be maintained, at least in the short term. This option acknowledges that passive safety devices, such as blade guards, riving knives, and pawls, are already provided to purchasers of new table saws and can be used by consumers to prevent many types of blade-contact injury. Additionally, the option recognizes that table saws with the AIM technology are already available for consumers who want and can afford them.

Over the longer term, changes in the voluntary standard may increase the level of safety with table saws. Sales of table saws with the AIM technology may also gradually increase as consumers become more familiar with the improved safety characteristics of these table saws. Table saws with AIM systems are now available for purchase by consumers in all table saw categories, including the introductions of the SawStop bench saw model in March 2015 and the introduction of the Bosch

[99] The current retail prices of the SawStop models and the Bosch REAXX™ model currently marketed are consistent with the upper end of these possible price increases.

REAXX™ jobsite saw in June 2016. Moreover, sales of saws with the AIM technology could expand further if prices decline. However, for now, the price differentials between a table saw with AIM and a comparable saw without AIM are substantial, particularly for bench saws.

We cannot estimate the benefits and costs that would be associated with this alternative because the estimates would be affected by factors such as the extent to which manufacturers introduce new table saws with AIM technology, the price of the table saws, and the rate at which consumers would choose to purchase table saws with AIM technology in the absence of a rule. However, because the rate at which AIM technology would be adopted in the absence of a mandatory rule probably would be substantially lower than the rate under a mandatory rule, both the benefits and costs of this alternative would be much lower than estimated for the proposed rule. Most significantly, although taking no mandatory regulatory action would minimize the impact on small table saw manufacturers, it would not mitigate the large number of blade-contact injuries that are associated with table saws.

2. Defer to the Voluntary Standard for Table Saws

Another alternative would be for the CPSC staff to continue participating and encouraging safety improvements to the voluntary standard for table saws, UL 987. While this option would be similar to the 'no action alternative,' the Commission could direct the staff to continue to pursue safety improvements in the voluntary standard, including the adoption of the AIM safety technology over time, as a conditional alternative to a mandatory standard. The Commission could consider proposing a mandatory standard if the voluntary standard development activities remain unsatisfactory.

CPSC staff has had an ongoing, active role in the voluntary standards body and the development of UL 987. Staff has supported recent changes in the voluntary standard, including requirements for improved blade guards and riving knives, and considers the newer blade guard systems to be a significant improvement over earlier systems. However, as discussed in section VI of the preamble, there is little evidence that improvements in these passive safety devices has effectively reduced the number or severity of blade-contact injuries on table saws. Additionally, voluntary standards committees have twice rejected initiatives by UL to adopt voluntary standards that include AIM systems for table saws. Although relying on the voluntary standard process would minimize the impact on small table saw manufacturers, that approach would be unlikely to mitigate the blade-contact injuries that are associated with table saws.

3. Later Effective Dates

The proposed rule includes an effective date that is 3 years after the final rule is published in the **Federal Register**. Given the complexities and costs that would be associated with developing (or licensing) the AIM technology, redesigning virtually all table saw models, and retooling production facilities, an effective date later than 3 years could further reduce the impact of the rule on small manufacturers. A longer effective date would allow manufacturers additional time to spread the costs of developing or negotiating for the rights to use an AIM technology, to modify the design of their table saws to incorporate the AIM technology, and to retool their factories for production. For manufacturers that might choose to exit the table saw market, perhaps because their volume of table saw sales does not justify the cost of redesigning the table saws, the additional delay might also provide them with more time to consider alternative business opportunities. A later effective date might especially benefit manufacturers of bench saws because of the added technical difficulties in engineering small bench saws to incorporate an AIM technology.

While later effective dates would mitigate somewhat the impact of the proposed rule on some manufacturers, including small manufacturers, that approach also could delay the introduction of table saws with AIM technology into the market and possibly discourage manufacturers from introducing table saws with AIM technology earlier than the effective date. Moreover, a delayed effective date would delay the mitigation of blade-contact injuries associated with table saws, and reduce the net benefits associated with the proposed rule. The Commission seeks comment on the duration of the effective date and whether a longer or shorter effective date is appropriate.

4. Exempt Contractor and Cabinet Saws From a Product Safety Rule

Another alternative considered by the Commission would exempt cabinet and/or contractor saws that are used by and are intended for professional, commercial, or industrial users. Or the Commission could exempt an even smaller subset of cabinet or industrial saws based on a certain size, weight, power, and electrical specifications. These alternatives would reduce the impact on small table saw manufacturers because cabinet and contractor saw manufacturers tend to be small. (Manufacturers of bench saws, on the other hand, tend to be large.) However, there is no clear dividing line between consumer and professional saws, except at the very highest levels of price and performance. Additionally, we have little information on the proportion of occupational purchasers for contractor saws and cabinet saws.

Moreover, as discussed above in section VI.C. of the preamble, although most cabinet and contractor saws are used by professionals or in commercial settings, they are available for sale to consumers, and many serious consumer woodworkers and hobbyists also use these saws. Cabinet and contractor saws are also frequently used in schools and other educational settings. CPSC staff's breakeven analysis found that mandating AIM technology on cabinet and contractor saws likely would result in substantial net benefits under the various scenarios modelled. However, the Commission seeks comment regarding whether the scope of the rule should be modified to exclude certain types of table saws that are primarily used for commercial or industrial use or that have certain specifications.

5. Limit the Applicability of the Performance Requirements to Some, but Not All, Table Saws

Rather than requiring all table saws to meet the requirements of the proposed rule, the Commission could consider an alternative that requires only a subset of table saws to meet the requirements. For example, if a firm produces only bench saws, the Commission might require the firm to produce at least one bench saw model that meets the requirements of the standard. Similarly, if a firm produces bench saws and contractor saws, the Commission might require the firm to produce at least one bench saw model and one contractor saw model that meet the requirements of the standard. Or, as a variation, the Commission might allow each manufacturer to produce at least one bench saw model that does not meet the requirements of the standard as long as their other bench models conform to the requirements of the rule.

Limiting the requirement for the AIM technology to a subset of table saws could have several advantages. Saws with the AIM technology would be available in substantially greater numbers than they have been in recent

years. It would also address the potential market failure associated with one firm's market power over the AIM technology through patents, effectively eliminating competition, while at the same time allowing consumers to choose table saws without AIM technology if they prefer. Consequently, consumers who place a great value on safety or who face greater than average risks will find the safer table saws more desirable and will be more likely to buy them. Consumers who do not want the safer but more expensive saws can decide to purchase saws without the AIM technology. In this way, consumer preferences might be better matched with the products they wish to purchase.

If licensing agreements satisfactory to all parties could be arranged, this alternative would also alleviate (though not eliminate) the burden of the proposed rule on some manufacturers, including small manufacturers, because it would not require that all of their saws contain the AIM technology. However if licensing arrangements could not be agreed upon, then small manufacturers might be faced with an even greater burden and potentially face even higher prices. If patent holders are not willing to license their technology under reasonable terms, the impact on small manufacturers could be greater because they would need either to incur greater costs to develop their own technology or exit the table saw market.

Moreover, this alternative would address only a portion of blade-contact injuries. If, for example, the requirement led to about 50 percent of table saws being equipped with the AIM technology, the expected benefits would be on the order of about 50 percent of the benefits described in the reference case analysis (or somewhat higher if consumers with the greater risks were more likely to purchase the safer table saws).[100] Accordingly, this alternative would not mitigate the large number of blade-contact injuries associated with table saws, and would reduce the net benefits associated with the proposed rule. The Commission seeks comment on what impact limiting the requirement for the AIM technology to a subset of table saws would have on manufacturers, including small businesses.

6. Information and Education Campaign

The Commission could conduct an information and education campaign informing consumers about blade contact hazards and blade-contact injuries, and the benefits of the AIM technology. This alternative could be implemented on its own, in the absence of other regulatory options, or it could be implemented in combination with any of the alternative options.

As discussed in section IX of the preamble and in TAB E of the staff briefing package, the effectiveness of warnings and instructions is limited. Although educational programs offer more opportunities to present hazard information in varied ways, and in greater detail than warning labels, the effectiveness of such programs is also limited because they depend on consumers not only receiving and understanding the message, but also being persuaded to heed the message. Although the Commission believes that such a campaign could help inform consumers, based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on table saws.

XII. Initial Regulatory Flexibility Analysis

This section provides an analysis of the impact the proposed rule would have on small businesses. Whenever an agency is required to publish a proposed rule, section 603 of the Regulatory Flexibility Act (RFA) requires that the agency prepare an initial regulatory flexibility analysis (IRFA) that describes the impact that the rule would have on small businesses and other entities. 5 U.S.C. 603. An IRFA is not required if the head of an agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The IRFA must contain:

(1) A description of why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) identification to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

An IRFA must also contain a description of any significant alternatives that would accomplish the stated objectives of the applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. According to the IRFA, alternatives could include: (1) Differing compliance or reporting requirements that take into account the resources available to small businesses; (2) clarification, consolidation, or simplification of compliance and reporting requirements for small entities; (3) use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule thereof, for small entities. The alternatives the Commission considered are discussed in section XI(J) of the preamble and TAB D of the staff briefing package.

A. Reason for Agency Action

The proposed rule for table saws would reduce an unreasonable risk of injury associated with blade-contact injuries on table saws. CPSC staff estimates that there are approximately 54,800 medically treated blade-contact injuries annually based on 2015 injury data and estimates from the ICM. Almost 23 percent of the injuries involved fractures, amputations accounted for 14 percent of the injuries, and lacerations accounted for about 57 percent. AIM technology has been shown to effectively mitigate the severity of injuries caused by a victim's hand or other body part contacting the blade while the table saw is in operation. Accordingly, the proposed rule would establish a performance requirement to address the risk of injuries associated with blade-contact injuries on table saws.

B. Objectives of and Legal Basis for the Proposed Rule

The objective of the proposed rule is to mitigate operator injuries resulting from blade contact on table saws. The Commission published an ANPR in October 2011, which initiated this proceeding to evaluate regulatory options and potentially develop a mandatory standard to address the risks of blade-contact injuries associated with the use of table saws. The proposed rule

[100] We cannot predict what proportion of table saw sales would ultimately contain the AIM technology under this alternative. If consumers place a high value on safety, and prices are reduced or moderated over time, the proportion might be high. If, however, consumers would generally prefer saws without the AIM technology because of the lower prices or for other reasons, the proportion would be lower. Product liability concerns on the part of manufacturers would probably increase the proportion of table saws with the AIM technology. Once the table saws with AIM technology become more commonplace, table saws without the technology would be more likely to be challenged in product liability suits.

is being promulgated under the authority of the CPSA.

C. Small Entities to Which the Proposed Rule Will Apply

The proposed rule would apply to manufacturers, importers, and private labelers of table saws that are sold in the United States. As of February 2016, CPSC is aware of 22 firms that supply table saws to the U.S. market. Of these 22 firms, at least 8, and possibly 10, are small according to criteria established by the Small Business Administration (SBA).[101] According to the SBA criteria, a table saw manufacturer is considered small if it has fewer than 500 employees, and a table saw importer is considered small if it has fewer than 100 employees. Private labelers of table saws are considered ''small'' if their annual revenue exceeds $38.5 million in the case of home centers, $32.5 million in the case of department stores, and $7.5 million in the case of hardware stores.[102]

Small table saw manufacturers supply mostly contractor and cabinet saws, which are typically more expensive and heavier than bench saws. Contractor saws generally retail for between $529 to $2,049 and weigh between about 198 and 414 pounds. Cabinet saws typically retail for $1,199 to $5,349 and weigh between about 321 and 1,040 pounds. One small company sells a multipurpose machine that includes a table saw, lathe, drill press, sander, and router, among other tools. The cost of this multipurpose machine starts at about $3,379. As of March 2016, only three bench saw models were being offered by small manufacturers. One of these was a bench saw that was much heavier (233 pounds) and more expensive ($1,499) than most other bench saws. Another bench saw, offered by SawStop, already incorporates an AIM technology and retails for around $1,300. The size and weight of the third bench is more typical of the bench table saws offered by the larger manufacturers.[103]

D. Compliance, Reporting, and Record Keeping Requirements of Proposed Rule

The proposed rule would establish a performance requirement limiting the depth of cut to 3.5 mm when a test probe contacts the spinning saw blade at a radial approach rate of 1.0 m/s. Section 14 of the CPSA requires manufacturers, importers, or private labelers of a consumer product subject to a consumer product safety rule to certify, based on a test of each product or a reasonable testing program, that the product complies with all rules, bans or standards applicable to the product. The proposed rule does not specify a test procedure that the Commission would use to determine compliance with the standard. Any test procedure that will accurately determine compliance with the proposed performance requirements may be used. However, if a final rule is issued, manufacturers must certify that the product conforms to the standard, based on either a test of each product, or any reasonable method to demonstrate compliance with the requirements of the standard. For products that manufacturers certify, manufacturers would issue a general certificate of conformity (GCC).

Section 14 of the CPSA sets forth the requirements for GCCs. Among other requirements, each certificate must identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body, on whose testing the certificate depends, the place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

1. Costs of Proposed Rule That Would Be Incurred by Small Manufacturers

To comply with the proposed rule, table saw manufacturers would need to license or develop an AIM technology. To license a technology, manufacturers will have to pay a royalty to the owner of the patents on the technology. The royalty cost for licensing an AIM technology is uncertain. Dr. Gass of SawStop has indicated that SawStop would be willing to license the SawStop AIM technology for a royalty payment of 8 percent of the wholesale price of the saw, but only if the Commission establishes a mandatory standard requiring AIM technology. There is no certainty that SawStop actually would license its technology under terms that would be acceptable to other manufacturers even if a mandatory standard were established. Several companies have asserted that they had attempted to license the SawStop technology without success. Bosch uses an AIM technology on its REAXX™ bench saw that was developed, in part, through a joint venture of several members of the PTI. The terms under which this technology may be available for license are not known and may be affected by ongoing patent infringement litigation.

To avoid royalty or licensing fees, the manufacturer would have the challenge of developing its own AIM technology that did not infringe on an existing patent. At a minimum, developing an AIM system would likely cost at least several hundred thousand dollars, and perhaps several million dollars, based on the estimated costs of developing the existing technologies. However, the extent and scope of the SawStop patents that could impact future AIM technological developments is unknown. It is possible that new AIM technologies that are developed could also infringe on existing SawStop patents that have been filed or are pending.

After acquiring an AIM technology, manufacturers will need to redesign their table saws and retool their manufacturing facilities to incorporate the technology. According to several manufacturers, incorporating an AIM technology would require a redesign of each table saw including possibly, the trunnion, the cabinet, and interior of the saw. In addition, the support structure of the table saw, including the stand, might have to be strengthened to bear the added weight of the system and to absorb the force that could result from the system being triggered.

Estimates of the redesign and retooling costs ranged from a low of about $100,000 per model to $700,000. The redesign and retool process would be expected to take 1 to 3 years depending upon the problems encountered in the process. The redesign and retooling costs for subsequent models might be somewhat less than the costs associated with the first model.

There is some uncertainty as to how the redesign and retooling costs would affect manufacturers. One manufacturer noted that the redesign and retooling costs have to be paid upfront and manufacturers generally desire to amortize these costs over three years. However, most table saw brand owners contract with Chinese or Taiwanese manufacturers to actually manufacture the table saws. In some cases, these manufacturers may produce table saws for more than one firm and may be willing to absorb some of the costs in order to remain in the market.

[101] IEc, 2016a at 9.

[102] Under the North American Industrial Classification System (NAICS) manufacturers of table saws are classified in category 333243 (Sawmill, Woodworking, and Paper Machinery Manufacturing). Importers or private labelers of table saws include some department stores (NAICS category 4452111, home centers (NAICS category 444110), and some hardware stores (NAICS category 444130).

[103] IEc, 2016a, Table Saw Models, February 29, 2016.

In addition to the redesign and retooling costs, there will be added costs due to the additional components required on saws that incorporate an AIM technology. Depending upon the specific system used, the additional parts may include a brake cartridge, cables, additional parts or brackets to secure the brake cartridge, electrodes and assemblies and a power supply or motor control. These additional components are expected to add between $58 and $74 to the manufacturing cost of a table saw.

2. Impacts on Small Businesses

To comply with the proposed rule, most small manufacturers are expected to license an AIM technology instead of developing their own technology. The costs of attempting to develop their own AIM technology would probably be too high for most small manufacturers. However, there is no certainty that small manufacturers would be able to negotiate acceptable licensing agreements with SawStop or another patent holder. If small manufacturers are unable to negotiate acceptable licensing agreements for AIM technology, it is likely that all small table saw manufacturers, with the exception of SawStop, will exit the U.S. table saw market.

If small table saw manufacturers are able to license AIM technology, they would be expected to evaluate the sales volume of each table saw model and the likely cost of redesigning and retooling the model and decide whether to continue offering the model in the United States. If the manufacturer does not believe that the sales volume would be sufficient to recoup these costs in a reasonable amount of time, it is likely that the manufacturer would discontinue the sale of the model (at least in the United States).[104] The fact that some small table saw manufacturers might license the AIM technology from SawStop would mean that these manufacturers would be paying royalties to a competitor. This would be expected to reduce their competitiveness in the table saw market. Four firms indicated to CPSC staff that they would likely reduce or eliminate the table saws that they currently offer in the United States if AIM technology is mandated.

With the exception of SawStop and one other firm, most small table saw manufacturers also supply other types of woodworking or metal working equipment. Anecdotal information suggests that U.S. sales of table saws account for a small percentage of the total revenue of most small firms. Information supplied by one manufacturer suggests that U.S. table saw sales accounted for about 1 percent of the firm's total revenue. Two other firms estimated that U.S. table saw sales accounted for between 5 and 8 percent of their total revenue. Actions that impact a firm's revenue by more than 1 percent are potentially significant. Therefore, given that it is likely that small table saw manufacturers would drop one or more table saws from the U.S. market if the proposed rule were adopted, and may leave the market entirely if they are unable to license an AIM technology, the proposed rule could have a significant impact on small manufacturers. However, the proposed rule is not likely to cause most small manufacturers to fail completely. One small manufacturer, SawStop, would significantly benefit from the promulgation of the proposed rule because it already manufactures table saws with AIM technology and owns multiple patents that cover AIM technology.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

OSHA has established standards that cover woodworking equipment used in workplace settings. These standards are codified at 29 CFR 1910.213. Generally, these requirements cover workplace safety and the use of safety devices such as blade guards and hoods. Currently, OSHA standards do not mandate performance requirements that would use AIM technology on table saws that are used by consumers. Accordingly, the Commission has not identified any federal rules that duplicate or conflict with the proposed rule.

F. Alternatives Considered To Reduce the Burden on Small Entities

Under section 603(c) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis should ''contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant impact of the proposed rule on small entities.'' CPSC examined several alternatives to the proposed rule that could reduce the impact on small entities. These include: (1) No regulatory action; (2) defer to voluntary standard activities for table saws; (3) establish alternative effective dates; (4) exempt or limit certain categories of table saws from the rule. These alternatives are discussed in more detail in section XI.J. of the preamble. The Commission invites comments on this IRFA and the potential impact of the proposed rule on small entities, especially small businesses. Small businesses that believe they will be affected by the proposed rule are especially encouraged to submit comments. The comments should be specific and describe the potential impact, magnitude, and alternatives that could reduce the impact of the proposed rule on small businesses.

XIII. Environmental Considerations

The Commission's regulations address whether CPSC is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS). 16 CFR 1021.5. Those regulations state CPSC's actions that ordinarily have ''little or no potential for affecting the human environment,'' and therefore, are categorically excluded from the need to prepare and EA or EIS. Among those actions are rules, such as the proposed rule addressing blade-contact injuries on table saws, which provide performance standards for products. *Id.* 1021.5(c)(1).

XIV. Executive Order 12988 (Preemption)

In accordance with Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of the proposed rule, as follows:

The regulation for addressing blade-contact injuries on table saws is proposed under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that ''whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.'' 15 U.S.C. 2075(a). Upon application to the Commission, a state or local standard may be excepted from this preemptive effect if the state or local standard: (1) Provides a higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. In addition, the federal government, or a

[104] One small manufacturer indicated to staff in a telephone call on November 30, 2015, that they would want to be able to amortize the redesign and retooling costs over a 3-year period.

state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk of injury as the CPSC standard if the federal, state, or local requirement provides a higher degree of protection than the CPSA requirement. 15 U.S.C. 2075(b).

Thus, the table saw requirement proposed in today's **Federal Register** would (if finalized) preempt non-identical state or local requirements for table saws designed to protect against the same risk of injury from blade-contact injuries on table saws.

XV. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). A final rule addressing blade-contact injuries on table saws would subject table saws to this certification requirement.

XVI. Paperwork Reduction Act

The proposed rule does not require manufacturers (including importers) to maintain records beyond those necessary to comply with 16 CFR part 1110. Accordingly, the proposed rule does not contain collection of information requirements as defined under the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

XVII. Effective Date

The CPSA requires that consumer product safety rules take effect not later than 180 days from their promulgation unless the Commission finds there is good cause for a later date. 15 U.S.C. 2058(g)(1). The Commission proposes that the rule would take effect 3 years from the date of publication of the final rule for table saws.

Given the complexities and costs that would be associated with developing or licensing the AIM technology, redesigning virtually all table saw models, and retooling production facilities, the Commission believes that this later effective date could reduce the impact of the rule on manufacturers, including small manufacturers. This later date would allow manufacturers to spread the costs of developing or negotiating for the rights to use an AIM technology, modify the design of their table saws to incorporate the AIM technology, and retool their factories for the production of table saws with the new technology. For manufacturers who might choose to exit the table saw market, perhaps because their volume of table saw sales does not justify the cost of redesigning the table saws, the additional delay might also provide them with more time to consider alternative business opportunities.

XVIII. Proposed Findings

The CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. Specifically, the CPSA requires that the Commission consider and make findings about:

- The degree and nature of the risk of injury;
- the number of consumer products subject to the rule;
- the need of the public for the product and the probable effect on utility, cost, and availability of the product; and
- other means to achieve the objective of the rule, while minimizing the impact on competition, manufacturing, and commercial practices.

15 U.S.C. 2058(f)(1).

The CPSA also requires that the Commission find that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product and that issuing the rule is in the public interest. 15 U.S.C. 2058(f)(3).

In addition, the Commission must find that:

- If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to reduce adequately the risk of injury, or compliance with the voluntary standard is not likely to be substantial;
- that benefits expected from the regulation bear a reasonable relationship to its costs; and
- that the regulation imposes the least burdensome requirement that would prevent or adequately reduce the risk of injury. *Id.*

These findings are discussed below.

A. Degree and Nature of the Risk of Injury

In 2015, there were an estimated 33,400 table saw, emergency department-treated injuries. Of these, CPSC staff estimates that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. Of the 30,800 emergency department-treated, blade-contact injuries, an estimated 28,900 injuries (93.8 percent) involved the finger. The most common diagnosis in blade-contact injuries is an estimated 18,100 laceration injuries (58.8 percent), followed by an estimated 5,900 fractures (19.0 percent), an estimated 4,700 amputations (15.2 percent), and an estimated 2,000 avulsions (6.5 percent). An estimated 3,800 (12.3 percent) of the blade-contact injury victims were hospitalized.

An estimated 4,700 amputation injuries on table saws occurred in 2015, alone. Compared to all other types of consumer products, CPSC estimates that table saw-related amputations account for 18.6 percent of all amputations in the NEISS in 2015. When compared to all other workshop products, table saws account for an estimated 52.4 percent of all amputations related to workshop products in 2015. Based on NEISS estimates, the trend analysis for yearly blade-contact injuries associated with table saws showed no discernible change in the number of injuries or types of injuries related to table saw blade contact from 2004 to 2015. In addition, the trend analysis for the risk of blade-contact injury per 10,000 table saws in use yearly showed no discernible change in the risk of injury associated with table saw blade contact from 2004 to 2015.

B. Number of Consumer Products Subject to the Proposed Rule

The annual shipments of all table saws to the U.S. market from 2002 to 2014 have ranged from 429,000 to 850,000. Estimates of sales value are not readily available industry-wide. However, staff estimates that:

- Bench saws account for about 75 percent of the units sold and have an average product life estimated at 10 years;
- contractor saws (including hybrids) account for 20 percent of the units sold and have an average product life of 17 years;
- cabinet saws account for 5 percent of the units sold and have an average product life of 24 years;
- the annual number of table saws in use in the United States is 8.2 million table saws, including about 5.1 million bench saws, 2.3 million contractor saws, and 0.8 million cabinet saws.

Thus, bench, contractor, and cabinet saws account for about 62 percent, 28 percent, and 10 percent of the table saw population, respectively.

C. The Need of the Public for Table Saws and the Effects of the Proposed Rule on Their Utility, Cost, and Availability

Consumers commonly purchase table saws for the straight sawing of wood and other materials, and more specifically, to perform rip cuts, cross cuts, and non-through cuts. Because operator finger/hand contact with the table saw blade is a dominant hazard

pattern, the Commission proposes a performance requirement that would limit the depth of cut and significantly reduce the frequency and severity of blade-contact injuries on table saws.

The proposed rule would increase table saw production costs. CPSC expects that the prices for the least expensive bench saws now available would more than double, to $300 or more. In general, the retail prices of bench saws could increase by as much as $200 to $500 per unit, and the retail prices of contractor and cabinet saws could rise by as much as $350 to $1,000 per unit. These higher prices may be mitigated in the longer run, but the extent of any future price reductions is unknown.

Because of the likely decline in sales following the promulgation of a rule, consumers who choose not to purchase a new saw, due to the higher price, will experience a loss in utility by forgoing the use of table saws, or because they continue to use older saws that they would have preferred to replace. There may also be some other impacts on utility, such as an increase in the weight and (potentially) size of table saws. This factor may have a relatively small impact on the heavier and larger contractor and cabinet saws, but could markedly reduce the portability of some of the smaller and lighter bench saws.

D. Other Means To Achieve the Objective of the Proposed Rule, While Minimizing Adverse Effects on Competition and Manufacturing

The Commission considered alternatives to the proposed rule. For example, the Commission considered not taking regulatory action, deferring to the voluntary standard development process, exempting or limiting certain table saws from regulation, and information and education campaigns. However, as explained further in these proposed findings (section XVIII.I. of the preamble), the Commission finds that these alternatives would not adequately mitigate the unreasonable risk of injuries that is associated with table saw blade contact.

E. Unreasonable Risk

CPSC estimates that 30,800 table saw-related injuries involving blade contact were treated in hospital emergency departments (ED) in 2015. An estimated 93.8 percent of these injuries involved the finger. The most common diagnoses in blade-contact injuries are laceration injuries, fractures, amputations, and avulsion. Thousands of amputations (an estimated 4,700 amputation injuries in 2015 alone) occur each year on table saws. When compared to all other workshop products, table saws account for an estimated 52.4 percent of all amputations related to workshop products in 2015.

Existing safety devices, such as the blade guard and riving knife, do not adequately reduce the number or severity of blade-contact injuries on table saws. Table saws have been equipped with these passive safety devices since 2009 and there is no evidence of the effectiveness of these safety devices in reducing or mitigating blade-contact injuries. In CPSC's 2015 modular blade guard survey, a majority of respondents (80%) reported that there are circumstances that require the blade guard to be removed, and a majority of respondents reported they did not use the blade guard ''sometimes'' (28%), ''often'' (17%) or ''always'' (14%). Any situation where the blade guard is not used eliminates the effectiveness of the blade guard in preventing blade-contact injuries. In addition, a review of CPSRMS database found 11 incidents involving table saws that meet the current voluntary standard requirements for riving knives and modular blade guards. These incidents show that blade-contact injuries continue to occur on table saws equipped with riving knives and modular blade guards.

CPSC's trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws covered the timespan before the voluntary standard implemented the requirement for riving knives and modular blade guards on table saws (2004 to 2009) and the timespan after the requirements were implemented (2010 to 2015). The data showed that there is no discernible change in the number of injuries or types of injuries related to table saw blade contact from 2004 to 2015. A trend analysis to assess the risk of injury per 10,000 table saws in use showed there is no discernible change in the risk of injury associated with table saw blade contact from 2004 to 2015.

CPSC staff's review shows substantial net benefits for the proposed rule. Estimates of net benefits, across all table saw types, averaged about $1,500 to $4,000 per saw over its expected product life. Aggregate net benefits over approximately 1 year's production and sale of table saws could amount to about $625 million to about $2,300 million. The Commission concludes preliminarily that there is an unreasonable risk of injury associated with blade-contact injuries on table saws and finds that the proposed rule is reasonably necessary to reduce that unreasonable risk of injury.

F. Public Interest

This proposed rule is intended to address an unreasonable risk of blade-contact injuries on table saws. As explained in this preamble, adherence to the requirements of the proposed rule would reduce and mitigate severe blade-contact injuries on table saws in the future; thus, the rule is in the public interest.

G. Voluntary Standards

The current voluntary standard for table saws is Underwriters Laboratories Inc. (UL) 987, *Stationary and Fixed Electric Tools*. In August 2016, UL published the first edition of UL 62841–3–1, *Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery Part 3–1: Particular Requirements for Transportable Table Saws*. UL 62841–3–1. The effective date for UL 62841–3–1 is August 29, 2019. Until that date, UL 987 remains in effect, and table saw manufacturers can list their products to either UL 987 or UL 62841–3–1. Both standards specify that table saws shall be provided with a modular blade guard and riving knife.

The Commission does not believe that the voluntary standards adequately address blade-contact injuries on table saws. Existing safety devices, such as the blade guard and riving knife, which have been provided on table saws since 2009, do not adequately reduce the number or severity of blade-contact injuries on table saws. In CPSC's 2015 modular blade guard survey, 80 percent of respondents indicated that there are circumstances that require the blade guard to be removed. Clearly, removal of the blade guard eliminates its ability to prevent or reduce injuries. CPSC's review of incidents from the CPSRMS database identified 11 incidents involving table saws that were equipped with riving knives and modular blade guard systems. These incidents show that blade-contact injuries continue to occur on table saws equipped with riving knives and modular blade guards. Finally, CPSC's trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws from 2004 to 2015 shows that there is no discernible change in the number of injuries or types of injuries related to table saw blade contact from 2004 (when table saws did not have riving knives and modular blade guards) to 2015 (when table saws did have these features).

For these reasons, the Commission believes that the voluntary standard will not adequately address an unreasonable

risk of blade-contact injuries on table saws.

H. Relationship of Benefits to Costs

Based on estimates from NEISS and the ICM, the Commission finds that the proposed rule would address an estimated 54,800 medically treated blade-contact injuries annually. The societal costs of these injuries (in 2014 dollars and using a 3 percent discount rate) amounted to about $4.06 billion in 2015. Amputations accounted for about 14 percent of the medically treated blade-contact injuries and almost two-thirds of the injury costs. Overall, medical costs and work losses account for about 30 percent of these costs, or about $1.2 billion. The intangible costs associated with pain and suffering account for the remaining 70 percent of injury costs.

Because of the substantial societal costs attributable to Blade-contact injuries (about $4 billion annually), and the expected high rate of effectiveness of the proposed requirements in preventing blade-contact injuries, the estimated *gross* benefits of the proposed rule (*i.e.,* the expected reduction in societal costs) could amount to an average of about $2,300 to $4,300 per saw. Based on 1 year's production and sale of table saws, aggregate gross benefits could range from about $970 million to $2,450 million annually.

Staff estimates showed that increased manufacturing cost, as well as the expected costs of replacement parts for the AIM system, would range from about $230 to $540 per bench saw, to about $375 to $925 per contractor saw, and to about $400 to $950 per cabinet saw. These costs likely would be mitigated somewhat over time, but the extent of any future cost reduction is unknown. Based on 1 year's production and sale of table saws, aggregate gross costs could range from about $170 million to $340 million annually. In addition to the direct manufacturing and replacement parts costs, firms may need to pay approximately $30 million to $35 million annually in royalty fees to patent holders for the AIM technology.

Additionally, some consumers who would have purchased table saws at the lower pre-regulatory prices will choose not to purchase new table saws. The cost impact of the proposed rule on market sales may reduce aggregate sales by as much as 14 percent to 38 percent annually. The decline in sales will result in lost utility to consumers who choose not to purchase table saws because of the higher prices. Further, more reductions in consumer utility may result from the added weight, and hence, reduced portability associated with adding the AIM technology to the table saws.

Based on our benefit and cost estimates, the Commission estimates that net benefits (*i.e.,* benefits minus costs) for the market as a whole (*i.e.,* combining the three types of table saws together) amount to an average of about $1,500 to $4,000 per saw. Aggregate net benefits on an annual basis could amount to about $625 million to about $2,300 million.

I. Least Burdensome Requirement That Would Adequately Reduce the Risk of Injury

The Commission considered less burdensome alternatives to the proposed rule addressing blade-contact injuries on table saws and concluded preliminarily that none of these alternatives would adequately reduce the risk of injury.

No Action Alternative. The Commission considered not taking any regulatory action. Under this alternative table saws would continue to use existing passive safety devices, such as blade guards, riving knives, and anti-kickback pawls. Additionally, table saws with the AIM technology are already available for consumers who want and can afford them. However, not taking any action would leave the unreasonable risk of blade-contact injuries on table saws unaddressed. Based on the severity of injuries and recurring hazard patterns of Blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws.

Defer to the Voluntary Standard for Table Saws. The Commission considered deferring action to allow the voluntary standard for table saws, UL 987, to develop AIM technology. Although the CPSC has supported recent changes in the voluntary standard with requirements for newer blade guard systems and riving knives and considers these to be a significant improvement over earlier systems, there is little evidence that improvements in these passive safety devices have effectively reduced injuries. Additionally, voluntary standards committees have twice rejected initiatives by UL to adopt provisions that would require AIM systems. Consequently, it does not appear that the voluntary standards process is likely to lead to a requirement for the AIM technology in the near future.

Later Effective Dates. The proposed rule would require an effective date that is 3 years after the final rule is published in the **Federal Register**. The Commission considered a later effective date. An effective date later than 3 years could further reduce the impact of the rule on small manufacturers because it would allow them additional time to spread the costs of developing or negotiating for the rights to use an AIM technology, modify the design of their table saws to incorporate the AIM technology, and retool their factories for the production. For manufacturers that might choose to exit the table saw market, the additional delay might provide them with more time to consider alternative business opportunities.

However, later effective dates could also delay the introduction of table saws with AIM technology into the market and discourage manufacturers from introducing table saws with AIM technology earlier than the effective date, and possibly, put those manufacturers at a competitive disadvantage. Accordingly, the Commission believes that a 3-year effective date from the issuance of a final rule is an appropriate length of time.

Exempt Contractor and Cabinet Saws from a Product Safety Rule. The Commission considered whether to exempt cabinet and/or contractor saws used by professional, commercial, or industrial users, or based on certain size, weight, power, and electrical specifications of the table saw. However, based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws. Moreover, there is no clear dividing line between consumer and professional saws, except at the very highest levels of price and performances.

Limit the Applicability of the Performance Requirements to Some, but Not All, Table Saws. The Commission also considered limiting the scope of the rule to a subset of table saws to allow manufacturers to produce both table saw models with AIM technology, and models without AIM technology. However, based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws.

Information and Education Campaign

The Commission also considered whether to conduct an information and education campaign informing consumers about the dangers of blade-contact hazards, and the benefits of the AIM technology. Although such a campaign could help inform consumers, without a performance requirement, that approach would not be sufficient to address the unreasonable risk of blade-contact injuries on table saws.

XIX. Request for Comments

We invite all interested persons to submit comments on any aspect of the proposed rule. Specifically, the Commission seeks comments on the following:

Scope

- Information on whether certain types of table saws should be excluded from the scope of the rule, such as mini or micro tables saws, or table saws that are used primarily for commercial or industrial use.
- Information on whether the scope of the rule should be expanded to include types of saws other than table saws (*e.g.,* tile saws).
- Information on whether the definition of table saws should be revised, or whether other definitions are necessary.
- Information on home-made table saws or other dangerous alternatives consumers may pursue if they are not willing or are unable to purchase a table saw (with AIM capabilities).

Market Information

- Information on table saw sales, by table saw type (bench, contractor, cabinet), and information on the expected product lives of each type of table saw.

Patents

- Information on the effects of the pending expiration of certain SawStop patents in 2020 and 2022.
- Information on barriers to licensing technology that is patented.
- Information on the role of patents in standard business practice, and how this does or does not relate to table saw safety.

Binding RAND Commitment

- Information on the applicability of the American National Standards Institute's (ANSI) patent policy to any voluntary standard for table saws incorporating AIM technology. The patent policy requires that ANSI-Accredited Standards Developers who receive notice that a proposed standard may require the use of an essential patent claim shall ''receive from the patent holder or a party authorized to make assurances on its behalf, in written or electronic form, either:

(a) Assurance in the form of a general disclaimer to the effect that such party does not hold and does not currently intend holding any essential patent claim(s); or

(b) assurance that a license to such essential patent claim(s) will be made available to applicants desiring to utilize the license for the purpose of implementing the standard either: (i) Under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or (ii) without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination.'' (RAND Commitment)

- Information on whether the refusal of a potential essential-patent holder of the AIM technology to give the required assurances set forth in the ANSI patent policy would prohibit a voluntary standard requiring such technology.
- Information on the effect that a RAND Commitment covering potentially essential patent claims would have on the proposed rule's economic impact, including, but not limited to, its impact on competition, small businesses, and the cost and availability of table saws.
- Information on whether, as a matter of policy, CPSC should finalize a mandatory rule implicating potential essential patents absent a RAND Commitment covering such patents.
- Information on other government agencies that have proposed or adopted regulations implicating potential essential patents, including whether the holders of those patents had entered into RAND Commitments prior to the finalization of such regulations.

Utility

- Information on what impacts AIM technology may have on the utility of table saw use by consumers.

Effectiveness

- Information on effectiveness of AIM technologies. The CPSC staff's regulatory analysis estimated that the requirements of the proposed rule would reduce the risk of blade-contact injury by 70 percent to 90 percent. The Commission seeks comments from the public that either support these effectiveness estimates or that help the Commission adjust them appropriately.
- Information concerning the extent to which table saws are used for cutting wet wood and conductive materials, such as non-ferrous metals, and the extent to which the AIM technology may be deactivated during use.
- Information on whether consumers will use more unsafe methods to cut wood as an alternative to table saws that are equipped with AIM technology.

Manufacturing Costs

- Information on manufacturing costs. Based on the available information, there is considerable uncertainty concerning the per unit manufacturing cost impact on a table saw that would meet the requirements of the proposed rule. The Commission seeks any comments that would allow us to make more precise estimates or narrow the range we present regarding the unit manufacturing cost impact of a rule requiring the use of AIM technology on table saws.
- Information on the feasibility of incorporating AIM technology on small bench top table saws.

Test Requirements

- Information on how different detection methods may be applied as part of an AIM system and appropriate test methods to properly evaluate the triggering of AIM systems employing these detection methods.
- Studies or tests that have been conducted to evaluate AIM technology in table saws.
- Studies, research, or tests on the radial velocity of the human hand/finger in wordworking and, in particular, during actual blade contact incidents.

Regulatory Alternatives

- Information on whether a 36-month effective date is reasonable, and whether a longer or shorter effective date is warranted.
- Information on the feasibility of limiting or exempting a subset of table saws or certain types of table saws from the performance requirements.
- Information on the potential impact of the proposed rule on small entities, especially small businesses.

Anti-Stockpiling

- Information on the proposed product manufacture or import limits and the base period with respect to the anti-stockpiling provision.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document.

XX. Conclusion

For the reasons stated in this preamble, the Commission proposes requirements to address an unreasonable risk of injury associated with table saws.

List of Subjects in 16 CFR Part 1245

Consumer protection, Imports, Information, Safety.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

■ 1. Add part 1245 to read as follows:

PART 1245—SAFETY STANDARD FOR BLADE-CONTACT INJURIES ON TABLE SAWS

Sec.

1245.1 Scope, purpose and effective date.
1245.2 Definitions.
1245.3 Requirements.
1245.4 Test procedures.
1245.5 Prohibited stockpiling.
1245.6 Findings.

Authority: 15 U.S.C. 2056, 2058 and 2076.

§ 1245.1 Scope, purpose and effective date.

(a) This part 1245, a consumer product safety standard, establishes requirements for table saws, as defined in § 1245.2(a). These requirements are intended to reduce an unreasonable risk of injury associated with blade-contact injuries on table saws.

(b) Any table saw manufactured or imported on or after [date that 36 months after publication of a final rule] shall comply with the requirements stated in § 1245.3.

§ 1245.2 Definitions.

In addition to the definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2051), the following definition applies for purposes of this part 1245.

(a) *Table Saw* means a woodworking tool that has a motor-driven circular saw blade, which protrudes through the surface of table. Table saws include bench saws, contractor saws, and cabinet saws.

(b) [Reserved].

§ 1245.3 Requirements.

(a) *General.* All table saws covered by this standard shall meet the requirements stated in paragraph (b) of this section.

(b) *Test.* All table saws, when powered on, shall limit the depth of cut to 3.5 mm when a test probe contacts the spinning saw blade at a radial approach rate of 1.0 meter per second (m/s).

(c) *Test Probe.* The test probe shall act as the surrogate for a human body/finger and allow for the accurate measurement of the depth of cut to assess compliance with paragraph (b) of this section.

§ 1245.4 Test procedures.

Any test procedure that will accurately determine compliance with the standard may be used.

§ 1241.5 Prohibited stockpiling.

(a) *Base period.* The base period for table saws is any period of 365 consecutive days, chosen by the manufacturer or importer, in the 5-year period immediately preceding the promulgation of the final rule.

(b) *Prohibited acts.* Manufacturers and importers of table saws shall not manufacture or import table saws that do not comply with the requirements of this part in any 12-month period between (date of promulgation of the rule) and (effective date of the rule) at a rate that is greater than 120 percent of the rate at which they manufactured or imported table saws during the base period.

§ 1241.6 Findings.

(a) *General.* To issue a consumer product safety standard under the Consumer Product Safety Act, the Commission must make certain findings and include them in the rule. 15 U.S.C. 2058(f)(3). These findings are presented in this section.

(b) *Degree and nature of the risk of injury.* (1) In 2015, there were an estimated 33,400 table saw, emergency department-treated injuries. Of these, CPSC staff estimates that 30,800 (92 percent) likely are related to the victim making contact with the saw blade. Of the 30,800 emergency department-treated, blade-contact injuries, an estimated 28,900 injuries (93.8 percent) involved the finger. The most common diagnosis in blade-contact injuries is an estimated 18,100 laceration injuries (58.8 percent), followed by an estimated 5,900 fractures (19.0 percent), an estimated 4,700 amputations (15.2 percent), and an estimated 2,000 avulsions (6.5 percent). An estimated 3,800 (12.3 percent) of the blade-contact injury victims were hospitalized.

(2) An estimated 4,700 amputation injuries on table saws occurred in 2015, alone. Compared to all other types of consumer products, CPSC staff estimates that table saw-related amputations account for 18.6 percent of all amputations in the NEISS in 2015. When compared to all other workshop products, table saws account for an estimated 52.4 percent of all amputations related to workshop products in 2015. Based on NEISS estimates, the trend analysis for yearly blade-contact injuries associated with table saws showed no discernible change in the number of injuries or types of injuries related to table saw blade contact from 2004 to 2015. In addition, the trend analysis for the risk of blade-contact injury per 10,000 table saws in use yearly showed no discernible change in the risk of injury associated with table saw blade contact from 2004 to 2015.

(c) *Number of consumer products subject to the rule.*The annual shipments of all table saws to the U.S. market from 2002 to 2014 have ranged from 429,000 to 850,000. Estimates of sales value are not readily available industry-wide. However, staff estimates that bench saws account for about 75 percent of the units sold and have an average product life estimated at 10 years. Contractor saws (including hybrids account for 20 percent of the units sold and have an average product life of 17 years. Cabinet saws account for 5 percent of the units sold and have an average producat life of 24 years. The annual number of table saws in use in the United States is 8.2 million, including about 5.1 million bench saws, 2.3 million contractor saws, and 0.8 million cabinet saws. Thus, bench, contractor, and cabinet saws account for about 62 percent, 28 percent, and 10 percent of the table saw population, respectively.

(d) *The need of the public for table saws and the effects of the rule on their utility, cost, and availability.* Consumers commonly purchase table saws for the straight sawing of wood and other materials, and more specifically, to perform rip cuts, cross cuts, and non-through cuts. Because operator finger/hand contact with the table saw blade is a dominant hazard pattern, the performance requirement would limit the depth of cut and significantly reduce the frequency and severity of blade-contact injuries on table saws. However,the rule would increase table saw production costs. CPSC expects that the prices for the least expensive bench saws now available would more than double, to $300 or more. In general, the retail prices of bench saws could increase by as much as $200 to $500 per unit, and the retail prices of contractor and cabinet saws could rise by as much as $350 to $1,000 per unit. These higher prices may be mitigated in the longer run, but the extent of any future price reductions is unknown. Because of the likely decline in sales following the promulgation of a rule, consumers who choose not to purchase a new table saw, due to the higher price, will experience a loss in utility by forgoing the use of table saws, or because they continue to use older saws that they would have preferred to replace. There may also be some other impacts on utility, such as an increase in the weight and

(potentially) size of table saws. This factor may have a relatively small impact on the heavier and larger contractor and cabinet saws, but could markedly reduce the portability of some of the smaller and lighter bench saws.

(e) *Other means to achieve the objective of the rule, while minimizing the impact on competition and manufacturing.* The Commission considered alternatives to the rule. For example, the Commission considered not taking regulatory action, deferring to the voluntary standard development process, exempting or limiting certain table saws from regulation, and information and education campaigns. However, the Commission finds that these alternatives would not adequately mitigate the unreasonable risk of blade-contact injuries on table saws.

(f) *Unreasonable risk.* (1) CPSC estimates that 30,800 table saw-related injuries involving blade contact were treated in hospital emergency departments (ED) in 2015. An estimated 93.8 percent of these injuries involved the finger. The most common diagnoses in blade-contact injuries are laceration injuries, fractures, amputations, and avulsion. Thousands of amputations, (an estimated 4,700 amputation injuries in 2015 alone), occur each year on table saws. When compared to all other workshop products, table saws account for an estimated 52.4 percent of all amputations related to workshop products in 2015.

(2) Existing safety devices, such as the blade guard and riving knife, do not adequately reduce the number or severity of blade-contact injuries on table saws. Table saws have been equipped with these passive safety devices since 2009, and there is no evidence of the effectiveness of these safety devices in reducing or mitigating blade-contact injuries. In CPSC's 2015 modular blade guard survey, a majority of respondents (80%) reported that there are circumstances that require the blade guard to be removed, and a majority of respondents reported they did not use the blade guard ''sometimes'' (28%), ''often'' (17%) or ''always'' (14%). Any situation where the blade guard is not used, eliminates the effectiveness of the blade guard in preventing blade-contact injuries. In addition, a review of CPSRMS database found 11 incidents involving table saws that meet the current voluntary standard requirements for riving knives and modular blade guards. These incidents show that blade-contact injuries continue to occur on table saws equipped with riving knives and modular blade guards.

(3) CPSC's trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws covered the timespan before the voluntary standard implemented the requirement for riving knives and modular blade guards on table saws (2004 to 2009) and the timespan after the requirements were implemented (2010 to 2015). The data showed that there is no discernible change in the number of injuries or types of injuries related to table saw blade contact from 2004 to 2015. A trend analysis to assess the risk of injury per 10,000 table saws in use showed there is no discernible change in the risk of injury associated with table saw blade contact from 2004 to 2015.

(4) CPSC staff's review shows substantial net benefits for the rule. Estimates of net benefits, across all table saw types, averaged about $1,500 to $4,000 per saw over its expected product life. Aggregate net benefits over approximately 1year's production and sale of table saws could amount to about $625 million to about $2,300 million. The Commission concludes preliminarily that there is an unreasonable risk of injury associated with blade-contact injuries on table saws and finds that the rule is reasonably necessary to reduce that unreasonable risk of injury.

(g) *Public interest.* This rule is intended to address an unreasonable risk of blade-contact injuries on table saws. Adherence to the requirements of the rule would reduce and mitigate the severity of blade-contact injuries on table saws in the future; thus, the rule is in the public interest.

(h) *Voluntary standards.* (1) The current voluntary standard for table saws is Underwriters Laboratories Inc. (UL) 987, *Stationary and Fixed Electric Tools*. In August 2016, UL published the first edition of UL 62841–3–1, *Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery Part 3–1: Particular Requirements for Transportable Table Saws*. UL 62841–3–1. The effective date for UL 62841–3–1 is August 29, 2019. Until that date, UL 987 remains in effect, and table saw manufacturers can list their products to either UL 987 or UL 62841–3–1. Both standards specify that table saws shall be provided with a modular blade guard and riving knife.

(2) The Commission does not believe that the voluntary standards adequately address blade-contact injuries on table saws. Existing safety devices, such as the modular blade guard and riving knife, which have been provided on table saws since 2009, do not adequately reduce the number or severity of blade-contact injuries on table saws. In CPSC's 2015 modular blade guard survey, 80 percent of respondents indicated that there are circumstances that require the blade guard to be removed. Clearly, removal of the blade guard eliminates its ability to prevent or reduce injuries. CPSC's review of incidents from the CPSRMS database identified 11 incidents involving table saws that were equipped with riving knives and modular blade guard systems. These incidents show that blade-contact injuries continue to occur on table saws equipped with riving knives and modular blade guards. Finally, CPSC's trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws from 2004 to 2015 shows that there is no discernible change in the number of injuries, types of injuries, or risk of injuries related to table saw blade contact from 2004 (when table saws did not have riving knives and modular blade guards) to 2015 (when table saws did have these features). For these reasons, the Commission believes that the voluntary standard will not adequately address an unreasonable risk of injury associated with blade-contact injuries on table saws.

(i) *Relationship of benefits to costs.* (1) Based on estimates from NEISS and the ICM, the Commission finds that the rule would address an estimated 54,800 medically treated blade-contact injuries annually. The societal costs of these injuries (in 2014 dollars and using a 3 percent discount rate) amounted to about $4.06 billion in 2015. Amputations accounted for about 14 percent of the medically treated blade-contact injuries but almost two-thirds of the injury costs. Overall, medical costs and work losses account for about 30 percent of these costs, or about $1.2 billion. The intangible costs associated with pain and suffering account for the remaining 70 percent of injury costs.

(2) Because of the substantial societal costs attributable to blade-contact injuries (about $4 billion annually), and the expected high rate of effectiveness of the requirements in preventing blade-contact injuries, the estimated *gross* benefits of the proposed rule (*i.e.,* the expected reduction in societal costs) could amount to an average of about $2,300 to $4,300 per saw. Based on 1 year's production and sale of table saws, aggregate gross benefits could range from about $970 million to $2,450 million annually.

(3) Staff estimates showed that increased manufacturing cost, as well as the expected costs of replacement parts for the AIM system, would range from about $230 to $540 per bench saw, about $375 to $925 per contractor saw, and about $400 to $950 per cabinet saw.

These costs likely would be mitigated somewhat over time, but the extent of any future cost reduction is unknown. Based on 1 year's production and sale of table saws, aggregate gross costs could range from about $170 million to $340 million annually. In addition to the direct manufacturing and replacement parts costs, firms may need to pay approximately $30 million to $35 million annually in royalty fees to patent holders for the AIM technology.

(4) Additionally, some consumers who would have purchased table saws at the lower pre-regulatory prices will choose not to purchase new table saws. The cost impact of the rule on market sales may reduce aggregate sales by as much as 14 percent to 38 percent annually. The decline in sales will result in lost utility to consumers who choose not to purchase table saws because of the higher prices. Further, more reductions in consumer utility may result from the added weight, and hence, reduced portability associated with addition the AIM technology on table saws.

(5) Based on our benefit and cost estimates, the Commission estimates that net benefits (*i.e.,* benefits minus costs) for the market as a whole (*i.e.,* combining the three types of table saws together) amount to an average of about $1,500 to $4,000 per saw. Aggregate net benefits on an annual basis could amount to about $625 million to about $2,300 million.

(j) *Least burdensome requirement that would adequately reduce the risk of injury.* (1) The Commission considered less burdensome alternatives to the rule addressing blade-contact injuries on table saws and concluded preliminarily that none of these alternatives would adequately reduce the risk of injury.

(i) *No Action Alternative.* The Commission considered not taking any regulatory action. Under this alternative, table saws would continue to use existing passive safety devices, such as blade guards, riving knives, and anti-kickback pawls. Additionally, table saws with the AIM technology are already available for consumers who want and can afford them. However, not taking any action would leave the unreasonable risk of blade-contact injuries on table saws unaddressed. Based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws.

(ii) *Defer to the Voluntary Standard for Table Saws.* The Commission considered deferring action to allow the voluntary standard for table saws, UL 987, to develop AIM technology. Although the CPSC has supported recent changes in the voluntary standard with requirements for newer blade guard systems and riving knives and considers these to be a significant improvement over earlier systems, there is little evidence that improvements in these passive safety devices have effectively reduced injuries. Additionally, voluntary standards committees have twice rejected initiatives by UL to adopt provisions that would require AIM systems. Consequently, it does not appear that the voluntary standards process is likely to lead to a requirement for the AIM technology in the near future.

(iii) *Later Effective Dates.* The rule would require an effective date that is 3 years after the final rule is published in the **Federal Register**. The Commission considered a later effective date. An effective date later than 3 years could further reduce the impact of the rule on small manufacturers because it would allow them additional time to spread the costs of developing or negotiating for the rights to use an AIM technology, modify the design of their table saws to incorporate the AIM technology, and retool their factories for the production. For manufacturers that might choose to exit the table saw market, the additional delay might provide them with more time to consider alternative business opportunities. However, later effective dates could also delay the introduction of table saws with AIM technology into the market and discourage manufacturers from introducing table saws with AIM technology earlier than the effective date, and possibly, put those manufacturers at a competitive disadvantage. Accordingly, the Commission believes that a 3-year effective date from the issuance of a final rule is an appropriate length of time.

(iv) *Exempt Contractor and Cabinet Saws from a Product Safety Rule.* The Commission considered whether to exempt cabinet and/or contractor saws used by professional, commercial, or industrial users, or based on certain size, weight, power, and electrical specifications of the table saw. However, based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws. Moreover, there is no clear dividing line between consumer and professional saws, except at the very highest levels of price and performances.

(v) *Limit the Applicability of the Performance Requirements to Some, but Not All, Table Saws.* The Commission also considered limiting the scope of the rule to a subset of table saws to allow manufacturers to produce both table saw models with AIM technology, and models without AIM technology. However, based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission believes that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws.

(vi) *Information and Education Campaign.* The Commission also considered whether to conduct an information and education campaign informing consumers about the dangers of blade-contact hazards, and the benefits of the AIM technology. Although such a campaign could help inform consumers, without a performance requirement, that approach would not be sufficient to address the unreasonable risk of blade-contact injuries on table saws.

(2) [Reserved].

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of New York; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF119

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of New York

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 an application from Deepwater Wind, LLC, (DWW) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0486) (Lease Area) and along potential submarine cable routes to a landfall location in Easthampton, New York (''Submarine Cable Corridor'') (collectively the Lease Area and Submarine Cable Corridor are the Project Area). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to DWW to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than June 12, 2017.

ADDRESSES: Comments on DWW's IHA application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.mccue@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 to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/energy_other.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: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/energy_other.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 to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical area, the incidental, but not intentional, taking of small numbers of marine mammals provided that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals shall be allowed if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking, as well as the other means of effecting the least practicable adverse impact on the species or stock and its habitat (*i.e.,* mitigation) must be prescribed. Last, requirements pertaining to the monitoring and reporting of such taking must be set forth.

Where there is the potential for serious injury or death, the allowance of incidental taking requires promulgation of regulations under section 101(a)(5)(A). Subsequently, a Letter (or Letters) of Authorization may be issued as governed by the prescriptions established in such regulations, provided that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize incidental taking by harassment only (*i.e.,* no serious injury or mortality), for periods of not more than one year, pursuant to requirements and conditions contained within an Incidental Harassment Authorization (IHA). The promulgation of regulations or issuance of IHAs (with their associated mitigation, monitoring, and reporting) requires notice and opportunity for public comment.

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, we adversely affect the species or stock through effects on annual rates of recruitment or survival.

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).

Summary of Request

On December 1, 2016, NMFS received an application from DWW for the taking of marine mammals incidental to Spring 2017 geophysical survey investigations in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) lease area #OCS–A–0486 Lease Area and along potential submarine cable routes to a landfall location in Easthampton, New York (Project Area) designated and offered by the U.S. Bureau of Ocean Energy Management (BOEM), to support the development of an offshore wind project. DWW's request was for harassment only, and NMFS concurs that mortality is not expected to result from this activity, and an IHA is appropriate. NMFS determined that the application was adequate and complete on April 27, 2017.

The proposed geophysical survey activities would occur for 168 days beginning in June 2017, and geotechnical survey activities would take place in June 2017 and last for approximately 75 days. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Shallow and medium-penetration sub-bottom profiler (chirper, boomer, and sparker) used

during the HRG survey, and vibracore and dynamically-positioned (DP) vessel thruster used in support of geotechnical survey activities. Take, by Level B Harassment only of individuals of 18 species of marine mammals and take by Level A harassment of 3 species is anticipated to result from the specified activities. No serious injury or mortality is expected from DWW's HRG and geotechnical surveys.

Description of the Specified Activity

Overview

DWW proposes to conduct a geophysical and geotechnical survey in the Project Area to support the characterization of the existing seabed and subsurface geological conditions in the Project Area. Surveys will include the use of the following equipment: Multi-beam depth sounder, side-scan sonar, sub-bottom profiler, vibracores, and cone penetration tests (CPTs).

Dates and Duration

HRG surveys are anticipated to commence in June 2017 and will last for approximately 168 days, including estimated weather down time. Geotechnical surveys requiring the use of the DP drill ship will take place in June 2017, at the earliest, and will last for approximately 75 days excluding weather downtime. Equipment is expected run continuously for 24 hours per day.

Specified Geographic Region

DWW's survey activities will occur in the approximately 97,498-acre Lease Area designated and offered by BOEM. The Lease Area falls within the Rhode Island Massachusetts Wind Energy Area (RI–MA WEA; Figure 1 of the IHA application) with water depths ranging from 31–45 meters (m) (102–148 feet (ft)).

Detailed Description of the Specified Activities

High-Resolution Geophysical (HRG) Survey Activities

Marine site characterization surveys will include the following HRG survey activities:

- Depth sounding (multibeam depth sounder) to determine water depths and general bottom topography;
- Seafloor imaging (sidescan sonar survey) to classify seabed sediment, and to identify natural (*e.g.* hard bottom substrate) and man-made acoustic targets (*e.g.* archeological or cultural objects) resting on the bottom as well as any anomalous natural seafloor features;
- Shallow penetration sub-bottom profiler (chirp) to map the near surface stratigraphy (top 0–5 meter (m) soils below seabed);
- Medium penetration sub-bottom profiler (boomer) to map deeper subsurface stratigraphy as needed (soils down to 75–100 m below seabed;
- Medium penetration sub-bottom profiler (sparker) to map deeper subsurface stratigraphy as needed (soils down to 75–100 m below seabed); and
- Marine magnetometer for the detection and mapping of all sizes of ferrous objects, including anchors, chains, cables, pipelines, ballast stone and other scattered shipwreck debris, munitions of all sizes (UXO), aircraft, engines and any other object with magnetic expression.

The HRG surveys are scheduled to begin, in June, 2017. Table 1 identifies the representative survey equipment that is being considered in support of the HRG survey activities. The make and model of the listed HRG equipment will vary depending on availability but will be finalized as part of the survey preparations and contract negotiations with the survey contractor. The final selection of the survey equipment will be confirmed prior to the start of the HRG survey program. Only the make and model of the HRG equipment may change, not the types of equipment or the addition of equipment with characteristics that might have effects beyond (*i.e.,* resulting in larger ensonified areas) those considered in this proposed IHA. None of the proposed HRG survey activities will result in the disturbance of bottom habitat in the Project Area; however, the geotechnical surveys may temporarily disrupt the bottom habitat during vibracoring or CPTs. The impacts to the impact are expected to be negligible (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section).

TABLE 1—SUMMARY OF REPRESENTATIVE DWW GEOPHYSICAL AND GEOTECHNICAL SURVEY EQUIPMENT

Equipment	Operating frequencies	Source level	Source depth	Beam width (degrees)	Pulse duration
Multibeam Depth Sounding					
Reson SeaBat 7125 Multibeam Echosounder.	200 kHz or 400 kHz ..	220 dB_{RMS}	4m below surface	0.5° beam by 128° coverage.	0.03 to 0.3 milliseconds (ms).
Reson Multibeam Echosounder (7125).[1]	200 kHz or 400 kHz ..	221 dB_{RMS}	1 meter below surface.	128°	30–300 µs.
RESON 7000[1]	200 & 400 kHz	162 dB_{RMS}	2–5m below surface.	140°	0.33 ms.
R2SONIC	200 & 400 kHz	162 dB_{RMS}	1 meter below surface.	1°'28	0.11 ms.
Shallow Sub-bottom Profiling (chirp)					
Teledyne Benthos Chirp III Sub-bottom Profiler.	2–7 kHz	217 dB_{RMS}	4m below surface	45°	0.2 ms.
EdgeTech Full-Spectrum (Chirp) Ssub-bottom Profiler Equipped with a SB216 Tow Vehicle.	2–16 kHz	140–180 dB (peak SPL, dB re 1µPa).	0.5–1 meter distance from transducer.	170°	45 to 120 ms.
Medium Penetration Sub-bottom Profiling (boomer)					
Applied Acoustics (Fugro provided specs for Fugro boomer).	0.1–10 kHz	175 dB_{RMS}	1–2m below surface.	60°	58 ms.

TABLE 1—SUMMARY OF REPRESENTATIVE DWW GEOPHYSICAL AND GEOTECHNICAL SURVEY EQUIPMENT—Continued

Equipment	Operating frequencies	Source level	Source depth	Beam width (degrees)	Pulse duration
Applied Acoustics high-resolution (S-Boom System) medium penetration sub-bottom profiling system consisting of a CSP–D 2400HV power supply and 3-plate catamaran (600 joules/pulse).	0.250–8 kHz	222dB (re 1μPa at 2 meters).	0.5 meter below surface.	25°–35°	300–500 μs.
Medium Penetration Sub-bottom Profiling (sparker)					
800 Joule GeoResources Sparker	0.75–2.75 kHz	213 dB_{RMS} (186 dB_{SEL} for 1,000 Joul*).	4m below surface	omni directional 360°.	0.1 to 0.2 ms.
Applied Acoustics 100–1,000 joule Dura-Spark 240 System.	0.03 to 1.2 kHz	213 dB_{RMS} 186 dB_{SEL} for 1,000 Joul*.	0.5–1m below surface.	omni directional 360.	0.5–1.5 ms.
Side Scan Sonar					
EdgeTech 4200 Dual Frequency Side Scan Sonar System.	300 kHz and 900 kHz	215–220 dB	5–10m above seafloor.	horizontal 300 kHz: 0.5°; 900 kHz: 0.2° vertical (50°) l.	300 kHz up to 12 ms; 900 kHz up to 3 ms.
Side Scan Sonar: EdgeTech 4000[2] (spec provided for 4125).	410 kHz	225 dB_{RMS}	5–10m above seafloor.	400 kHz: 0.4°	10–20 ms.
EdgeTech 4200 Dual Frequency side scan sonar system.	300 kHz; 600 kHz	215–220 dB	5–10m above seafloor.	horizontal 300 kHz: 0.5°, 600 kHz: 0.26° vertical (50°).	300 kHz up to 12 ms; 600 kHz up to 5 ms.
Magnetometer (No sound is generated)					
G–882 Marine Magnetometer (self-oscillating split-beam nonradioactive cesium vapor).	N/A	N/A	N/A	highest sensitivity at 0.004 nT/ÖHz.	N/A.
SeaSPY	N/A	N/A	N/A	highest sensitivity at 0.01 nT/ÖHz.	N/A.
Vibracores					
Alpine Model P pneumatic Vibracore System3.	Unknown	Unknown	Seabed to 20ft above seabed.	omni directional 360.	duration of core.
Vibracore Operations: HPC or Rossfelder Corer4.	10–20 kHz	185 dB_{RMS}	46 meters	n/a	n/a.
CPTs					
Serafloor deployed 200kN CPT Rig ..	Unknown	Unknown	Seabed	omnidirectional 360.	duration of CPT.
Seabed CPT	n/a	n/a no effect	On seafloor	n/a	n/a.
DP Thruster System (possible during both geophysical and geotechnical surveys)					
DP Thruster/Propeller System	0.1 to 10 kHz	150 dB_{RMS}	12 m depth	Unknown	Unknown.

*BOEM, 2016, Table 10.

The HRG survey activities will be supported by a vessel approximately 100 to 200 ft in length and capable of maintaining course and a survey speed of approximately two to five knots while transiting survey lines

Given the size of the Lease Area (160,480 acres), to minimize cost, the duration of survey activities, and the period of potential impact on marine species, DWW has proposed conducting continuous HRG survey operations 24 hours per day. Based on 24-hour operations, the estimated duration of the survey activities would be approximately 168 days (including estimated weather down time).

Both NMFS and BOEM have advised that the deployment of HRG survey equipment, including the use of intermittent, impulsive sound-producing equipment operating below 200 kilohertz (kHz) (*e.g.,* sub-bottom profilers), has the potential to cause acoustic harassment to marine mammals. Based on the frequency ranges of the equipment to be used in support of the HRG survey activities (Table 1) and the hearing ranges of the marine mammals that have the potential to occur in the Lease Area during survey activities (Table 3), only the shallow and medium sub-bottom profilers (chirps, boomers, and sparkers), vibracores, and DP thruster systems fall within the established marine mammal hearing ranges and have the potential to result in Level B harassment of marine mammals.

Geotechnical Survey Activities

Marine site characterization surveys will involve the following geotechnical survey activities:

- Vibracores will be taken to determine the geological and geotechnical characteristics of the sediments; and
- Cone Penetration Testing (CPT) will be performed to determine stratigraphy and in-situ conditions of the sediments.

It is anticipated that the geotechnical surveys will take place no sooner than June 2017. Vibracore and CPT operations would utilize DP thrusters for about 60 percent of the time while holding on position and conducting the CPT or vibracore. Each CPT or vibracore would take about 15 to 30 minutes to conduct. Approximately 10 vibracores per day or 8 CPTs per day is expected, either one or the other (not both). Therefore, vibracores would run for approximately 5 hours per day assuming 10 per day at 0.5 hr per test. DP thrusters would be operating approximately 60% of the time or 3 hours per day for vibracore and 2.4 hours for CPT.

Geotechnical surveys are anticipated to be conducted from a 200-ft to 300-ft DP vessel/drill ship or a jack up barge with support of a tug boat. For purposes here, use of an approximately 200-ft to 300-ft DP vessel is assumed. All survey activities will be executed in compliance with Lease OCS–A–0486 (''Lease''), 30 CFR part 585 and the July 2015 *BOEM Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant to 30 CFR part 585.* DP vessel thruster systems maintain their precise coordinates in waters through the use of automatic controls. These control systems use variable levels of power to counter forces from current and wind. Operations will take place over a 24-hour period to ensure cost, the duration of survey activities, and the period of potential impact on marine species are minimized. Based on 24-hour operations, the estimated duration of the geotechnical survey activities would be approximately 75 days excluding weather downtime.

Field studies conducted off the coast of Virginia (Tetra Tech, 2014) to determine the underwater noise produced by borehole drilling and CPTs confirm that these activities do not result in underwater noise levels that are harmful or harassing to marine mammals (*i.e.,* do not exceed NMFS' current Level A and Level B harassment thresholds for marine mammals). However, underwater noise produced by the thrusters associated with the DP geotechnical vessel (estimated frequency range 0.1 to 10 kHz) that will be used to support the geotechnical activities has the potential to result in Level B harassment (DONG 2016).

Proposed mitigation, monitoring, and reporting measures are described in in detail later in the document (Mitigation section and Monitoring and Reporting section).

Description of Marine Mammals in the Area of the Specified Activity

There are 36 species of marine mammals that potentially occur in the Northwest Atlantic Outer Continental Shelf (OCS) region (BOEM, 2014) (Table 2). The majority of these species are pelagic and/or northern species or are so rarely sighted that their presence in the Project Area is unlikely. Eighteen of these species are included in the take estimate for this project based on seasonal density in the Project area. The other 18 species are not included in the take request because they have low densities in the Project area, are rarely sighted there, and are considered very unlikely to occur in the area. Six marine mammal species are listed under the Endangered Species Act (ESA) and are known to be present, at least seasonally, in the waters off the Northwest Atlantic OCS: Blue whale, fin whale, humpback whale, North Atlantic right whale, sei whale, and sperm whale, of which only 5 are included in the take request (blue whales are not included). Many of these species are highly migratory and do not spend extended periods of time in a localized area. The waters off the Northwest Atlantic OC (including the Lease Area) are primarily used as a stopover point for these species during seasonal movements north or south between important feeding and breeding grounds.

Below is a description of the species that are both common in the waters of the OCS southeast of New York and have the highest likelihood of occurring, at least seasonally, in the Project Area.

Further information on the biology, ecology, abundance, and distribution of those species likely to occur in the Project Area can be found in section 4 of DWW's application, and the NMFS Marine Mammal Stock Assessment Reports (see Waring *et al.,* 2016), which are available online at: *http://www.nmfs.noaa.gov/pr/species/.*

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Toothed whale (Odontoceti)					
Atlantic white-sided dolphin *(Lagenorhynchus acutus).*	W. North Atlantic	-; N	48,819 (0.61; 30,403; n/a)	304	rare.
Atlantic spotted dolphin *(Stenella frontalis).*	W. North Atlantic	-; N	44,715 (0.43; 31,610; n/a)	316	rare.
Bottlenose dolphin *(Tursiops truncatus).*	W. North Atlantic, Offshore	-; N	77,532 (0.40; 56,053; 2011).	561	Common year round.
Clymene Dolphin *(Stenella clymene).*	W. North Atlantic	-; N	Unknown (unk; unk; n/a) ...	Undet	rare.
Pantropical Spotted Dolphin *(Stenella attenuata).*	W. North Atlantic	-; N	3,333 (0.91; 1,733; n/a)	17	rare.
Risso's dolphin *(Grampus griseus).*	W. North Atlantic	-; N	18,250 (0.46; 12,619; n/a)	126	rare.
Short-beaked common dolphin *(Delphinus delphis).*	W. North Atlantic	-; N	70,184 (0.28; 55,690; 2011).	557	Common year round.
Striped dolphin *(Stenella coeruleoalba).*	W. North Atlantic	-; N	54,807 (0.3; 42,804; n/a) ...	428	rare.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS—Continued

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Spinner Dolphin *(Stenella longirostris)*.	W. North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
White-beaked dolphin *(Lagenorhynchus albirostris)*.	W. North Atlantic	-; N	2,003 (0.94; 1,023; n/a)	10	rare
Harbor porpoise *(Phocoena phocoena)*.	Gulf of Maine/Bay of Fundy	-; N	79,833 (0.32; 61,415; 2011).	706.	Common year round
Killer whale *(Orcinus orca)*	W. North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
False killer whale *(Pseudorca crassidens)*.	W. North Atlantic	-; Y	442 (1.06; 212; n/a)	2.1	rare.
Long-Finned pilot whale *(Globicephala melas)*.	W. North Atlantic	-; Y	5,636 (0.63; 3,464; n/a)	35	rare.
Short-finned pilot whale *(Globicephala macrorhynchus)*.	W. North Atlantic	-; Y	21,515 (0.37; 15,913; n/a)	159	rare.
Sperm whale *(Physeter macrocephalus)*.	North Atlantic	E; Y	2,288 (0.28; 1,815; n/a)	3.6	Year round in continental shelf and slope waters, occur seasonally to forage.
Pygmy sperm whale *(Kogia breviceps)*.	W. North Atlantic	-; N	3,785 [b] (0.47; 2,598; n/a)	26	rare.
Dwarf sperm whale *(Kogia sima)*.	W. North Atlantic	-; N	3,785 [b] (0.47; 2,598; n/a)	26	rare.
Cuvier's beaked whale *(Ziphius cavirostris)*.	W. North Atlantic	-; N	6,532 (0.32; 5,021; n/a)	50	rare.
Blainville's beaked whale *(Mesoplodon densirostris)*.	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
Gervais' beaked whale *(Mesoplodon europaeus)*.	W. North Atlantic	-; N	7,092 [c] 0.54; 4,632; n/a)	46	rare.
True's beaked whale *(Mesoplodon mirus)*.	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
Sowerby's Beaked Whale *(Mesoplodon bidens)*.	W. North Atlantic	-; N	7,092 [c] (0.54; 4,632; n/a)	46	rare.
Melon-headed whale *(Peponocephala electra)*.	W. North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
Baleen whales (Mysticeti)					
Minke whale *(Balaenoptera acutorostrata)*.	Canadian East Coast	-; N	2,591 (0.81; 1,425; n/a)	162	Year round in continental shelf and slope waters, occur seasonally to forage.
Blue whale *(Balaenoptera musculus)*.	W. North Atlantic	E; Y	Unknown (unk; 440; n/a)	0.9	Year round in continental shelf and slope waters, occur seasonally to forage.
Fin whale *(Balaenoptera physalus)*.	W. North Atlantic	E; Y	1,618 (0.33; 1,234; n/a)	2.5	Year round in continental shelf and slope waters, occur seasonally to forage.
Humpback whale *(Megaptera novaeangliae)*.	Gulf of Maine	-; N	823 (0; 823; n/a)	2.7	Common year round.
North Atlantic right whale *(Eubalaena glacialis)*.	W. North Atlantic	E; Y	440 (0; 440; n/a)	1	Year round in continental shelf and slope waters, occur seasonally to forage.
Sei whale *(Balaenoptera borealis)*.	Nova Scotia	E; Y	357 (0.52; 236; n/a)	0.5	Year round in continental shelf and slope waters, occur seasonally to forage.
Earless seals (Phocidae)					
Gray seals *(Halichoerus grypus)*.	North Atlantic	-; N	505,000 (unk; unk; n/a)	Undet	Unlikely.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OFF THE NORTHWEST ATLANTIC OCS—Continued

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Harbor seals *(Phoca vitulina)*.	W. North Atlantic	-; N	75,834 (0.15; 66,884; 2012).	2,006	Common year round.
Hooded seals *(Cystophora cristata)*.	W. North Atlantic	-; N	Unknown (unk; unk; n/a) ...	Undet	rare.
Harp seal *(Phoca groenlandica)*.	North Atlantic	-; N	Unknown (unk; unk; n/a) ...	Undet	rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2016 draft Atlantic SARs.

[3] Potential biological removal, 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 size (OSP).

North Atlantic Right Whales

The western North Atlantic stock of this species ranges from the calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Waring *et al.,* 2015). Surveys have demonstrated the existence of seven areas where western North Atlantic right whales congregate seasonally, including north of the action area off Georges Bank, Cape Cod, and Massachusetts Bay (Waring *et al.,* 2015). In the late fall months (*e.g.* October), right whales generally disappear from the feeding grounds in the North Atlantic and move south to their breeding grounds. Average group size for this stock was between 2.9 and 5.5 animals, with a maximum group size estimate during the project dates of 3.8 individuals (Parks *et al.,* 2007c).

The current abundance estimate for this stock is 440 individuals with PBR at 1 individual (Waring *et al.,* 2016). This stock is listed as endangered under the ESA and is therefore considered strategic and depleted under the MMPA. Critical habitat for this stock is a designated habitat that includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. These areas were determined to provide critical feeding, nursery, and calving habitat for the North Atlantic population of northern right whales. This critical habitat was revised in 2006 to include two foraging areas in the North Pacific Ocean—one in the Bering Sea and one in the Gulf of Alaska (71 FR 38277, July 6, 2006).

Humpback Whales

Humpback whales are found worldwide in all oceans. In the western North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the United States (including the Gulf of Maine), and farther north into Canadian waters. In the winter, they migrate to lower latitudes to breed. However, acoustic recordings made in Stellwagen Bank National Marine Sanctuary in 2006 and 2008 detected humpback song in almost all months, including throughout the winter, which confirms the presence of male humpback whales in the area (a mid-latitude feeding ground) through the winter in these years (Waring *et al.,* 2015). Their distribution in New England waters has been largely correlated to abundance of prey species.

The current abundance estimate for this stock is 823 animals with PBR at 1.3 (Waring *et al.,* 2016). Commercial exploitation caused the population to decrease in the 20th century. This stock is characterized by a positive trend in size (Waring *et al.,* 2015). Although recent estimates of abundance indicate a stable or growing humpback whale population, the stock may be below optimum substainable population (OSP) in the U.S. Atlantic EEZ. The main threat to this stock is interactions with fisheries and vessel collisions. This stock is not listed under the ESA but is considered strategic under the MMPA.

Fin Whale

Fin whales are common in waters of the U. S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). This area (east of Montauk Point) represents a major feeding ground for fin whales from March through October. Fin whales are found in small groups of up to 5 individuals (Brueggeman *et al.,* 1987).

The current abundance estimate for the western North Atlantic stock of fin whales is 1,618 with PBR at 2.5 animals (Waring *et al.,* 2016). This stock is listed as endangered under the ESA resulting in strategic and depleted status under the MMPA. The main threats to this stock are fishery interactions and vessel collisions (Waring *et al.,* 2016).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. The southern portion of the species' range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Sei whales occur in shallower waters to feed.

The current abundance estimate for this stock is 357 animals with PBR at 0.5 (Waring *et al.,* 2016). This stock is listed as engendered under the ESA and is considered strategic and depleted under the MMPA. The main threats to this

stock are interactions with fisheries and vessel collisions.

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W.) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in which spring to fall are times of relatively widespread and common occurrence, and when the whales are most abundant in New England waters, while during winter the species appears to be largely absent (Waring *et al.,* 2016).

The current abundance estimate for this stock is 2,591 animals with PBR at 162 (Waring *et al.,* 2016). The main threats to this stock are interactions with fisheries, strandings, and vessel collisions. This stock is not listed under the ESA and is not considered strategic under the MMPA.

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead 2002). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras.

The current abundance estimate for this stock is 2,288 with PBR at 3.6 animals (Waring *et al.,* 2016). This stock is listed as endangered under the ESA and is considered depleted and a strategic stock under the MMPA. The main threat to this species is interactions with fisheries.

False Killer Whale

False killer whales can be found in warm temperate and tropical waters, and have been sighted in U.S. Atlantic waters from southern Florida to Maine (Waring *et al.,* 2015). This species tends to be in offshore waters but at times inhabit waters closer to shore.

The current abundance estimate for this stock is 442 animals with PBR at 2.1 (Waring *et al.,* 2016). This species is not listed under the ESA but is considered a strategic stock under the MMPA. The main threat to this species include interactions with fisheries.

Cuvier's Beaked Whale

Cuvier's beaked whale distribution is poorly known. Sightings of this species have occurred principally along the continental shelf edge in the Mid-Atlantic region off the northeast U.S. coast, and most sightings were in late spring or summer.

The current abundance estimate for this stock is 6,532 animals with PBR at 50 (Waring *et al.,* 2016). This species is not listed under the ESA and is not considered strategic or depleted under the MMPA. The main threat to this species is interactions with fisheries and stranding associated with Naval activities (Waring *et al.,* 2014).

Long-Finned Pilot Whale

Long-finned pilot whales can be found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters this species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016).

The current abundance estimate for this stock is 5,636 animals with PBR at 35 (Waring et al., 2016). This species is not listed under the ESA but is considered strategic under the MMPA. The main threats to this species include interactions with fisheries and habitat issues including exposure to high levels of polychlorinated biphenyls and chlorinated pesticides, and toxic metals including mercury, lead, cadmium, and selenium (Waring *et al.,* 2016).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). There are three stock units: Gulf of Maine, Gulf of St. Lawrence and Labrador Sea stocks (Palka *et al.,* 1997). The Gulf of Maine population of white-sided dolphins is most common in continental shelf waters from Hudson Canyon (approximately 39° N.) to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities.

The current abundance estimate for this stock is 48,819 animals with PBR at 304 (Waring *et al.,* 2016). This stock is not listed under the ESA and is not considered strategic or depleted under the MMPA. The main threat to this species is interactions with fisheries.

White-Beaked Dolphin

The white-beaked dolphin is found in waters from southern New England to southern Greenland and Davis Straits but are concentrated in the western Gulf of Maine and around Cape Cod (Waring *et al.,* 2007). They prefer waters primarily offshore on the continental shelf, possibly due to the prey species located there.

The current abundance estimate for this stock is 1,023 animals with PBR at 10 (Waring *et al.,* 2016). This species is not listed under the ESA and is not considered depleted or strategic under the MMPA. The main threat to this stock is interaction with fisheries.

Short-Beaked Common Dolphin

The short-beaked common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, short-beaked common dolphins are commonly found over the continental shelf between the 100-m and 2000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). Only the western North Atlantic stock may be present in the Lease Area.

The current abundance estimate for this stock is 70,184 with PBR at 557 (Waring *et al.,* 2016). The main threat to

this species is interactions with fisheries. This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200 m isobaths (Waring *et al.,* 2014).

The current abundance estimate for this stock is 44,715 animals with PBR at 316 (Waring et al., 2016). This species is not listed under the ESA and is not considered depleted or strategic under the MMPA. The main threat to this species is interactions with fisheries.

Striped Dolphin

The striped dolphin is found in warm-temperate to tropical seas around the world. In the western North Atlantic, they are found from Nova Scotia to at least Jamaica and in the Gulf of Mexico with preference over continental slope waters (Waring *et al.,* 2014). In the Northeast, they are distributed along the continental shelf edge from Cape Hatteras to the southern margin of Georges Bank, and also occur offshore over the continental slope and rise in the mid-Atlantic region (Waring *et al.,* 2014). They were most often observed in waters between 20 and 27 degrees Celsius and deeper than 900 m (Waring *et al.,* 2014).

The current abundance estimate for this stock is 54,807 animals with PBR at 428 (Waring *et al.,* 2016). This stock is not listed under the ESA and is not considered a strategic or depleted stock under the MMPA. The main threat to this species is interactions with fisheries.

Common Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes: The coastal and offshore forms in the western North Atlantic (Waring *et al.,* 2016). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys and is the only type that may be present in the Lease Area.

The current abundance estimate for the Western north Atlantic stock is 77,532 with PBR at 561 (Waring *et al.,* 2016). The main threat to this species is interactions with fisheries. This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Harbor Porpoise

In the Lease Area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and are concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (>1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). Average group size for this stock in the Bay of Fundy is approximately 4 individuals (Palka 2007).

The current abundance estimate for this stock is 79,883, with PBR at 706 (Waring *et al.,* 2016). The main threat to this species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016). This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N. (Burns 2009). In the western North Atlantic, they are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016).

The current abundance estimate for this stock is 75,834, with PBR at 2,006 (Waring et al., 2016). The main threat to this species is interactions with fisheries. This species is not listed under the ESA and is not considered strategic or depleted under the MMPA.

Gray Seal

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. The gray seals that occur in the Project Area belong to the western North Atlantic Stock, which ranges from New Jersey to Labrador. Current estimates of the total western North Atlantic gray seal population are not available, although portions of stock have been calculated for select time periods. Models estimate that the total minimum Canadian gray seal population is at 505,000 individuals (Waring *et al.,* 2016). Present data are insufficient to calculate the minimum population estimate for U.S. waters; however, based on genetic analyses from the Canadian and U.S. populations, all individuals were placed into one population providing further evidence that this stock is one interbreeding population (Wood *et al.,* 2011). Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016). Gray seals are not listed under the ESA, and the stock is not considered strategic or depleted under the MMPA.

Gray seals start to group up in the fall and pupping generally occurs from mid-December to early February (USFWS 2015). Monomoy NWR is the largest haul-out site for gray seals on the U.S. Atlantic seaboard (USFWS 2015). Gray seals are known to use Monomoy NWR and Nantucket NWR land and water year round, with higher numbers accumulating during the winter and spring when pupping and molting occur. Gray seal pupping on Monomoy NWR was limited in the past but has been increasing rapidly in recent years. By early spring, upwards of 19,000 gray seals can be found hauled out on Monomoy NWR (B. Josephson, NOAA, personal communication). While many of these seals use Monomoy NWR for breeding, others make their way to the refuge to molt. By late spring, gray seal abundance continues to taper until the fall.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analyses and Determination* section will consider the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed*

Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's intensity and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 µPa'' and ''re: 1 µPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels. This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Acoustic Impacts

HRG survey equipment use and use of the vibracore and DP thruster during the geophysical and geotechnical surveys may temporarily impact marine mammals in the area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (*e.g.,* snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (*e.g.,* feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Southall *et al.,* 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range. For mid-frequency cetaceans, functional hearing estimates occur between approximately 150 Hz and 160 kHz with best hearing estimated to occur between approximately 10 to less than 100 kHz (Finneran *et al.,* 2005 and 2009, Natchtigall *et al.,* 2005 and 2008; Yuen *et al.,* 2005; Popov *et al.,* 2010 and 2011; and Schlundt *et al.,* 2011).

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2016; 81 FR 51694). This new guidance established new thresholds for predicting onset of temporary (TTS) and permanent (PTS) threshold shifts for impulsive (*e.g.,* explosives and impact pile drivers) and non-impulsive (*e.g.,* vibratory pile drivers) sound sources. These acoustic thresholds are presented using dual metrics of cumulative sound exposure level (SELcum) and peak sound level (PK) for impulsive sounds and SELcum for non-impulsive sounds. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007), and the revised generalized hearing ranges are presented in the new Guidance. The functional hearing groups and the associated frequencies are indicated in Table 3 below.

TABLE 3—MARINE MAMMAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGE

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* and *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer (km) away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (*i.e.,* typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (*e.g.,* spherical spreading (6 dB reduction with doubling of distance) was used in this example). As a result, it is important to understand

the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

As mentioned previously in this document, nine marine mammal species (seven cetaceans and two pinnipeds) are likely to occur in the Project Area. Of the seven cetacean species likely to occur in the Lease Area, four are classified as low-frequency cetaceans (*i.e.,* minke whale, fin whale, humpback whale, and North Atlantic right whale), two are classified as mid-frequency cetaceans (*i.e.,* Atlantic white-sided dolphin and short-beaked common dolphin), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by TTS and PTS. There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥40 dB (that is, 40 dB of TTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). Given the higher level of sound and longer durations of exposure necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed HRG and geotechnical survey.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days, can be limited to a particular frequency range, and can occur to varying degrees (*i.e.,* a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animals is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena phocaenoides*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002 and 2010; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Mooney *et al.,* 2009; Popov *et al.,* 2011; Finneran and Schlundt, 2010). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. However, even for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB rms or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.,* 2009). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Finneran (2016).

Scientific literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to sub-bottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends; intermittent exposures recover faster in comparison

with continuous exposures of the same duration (Finneran *et al.,* 2010). NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider TTS-onset to be the lowest level at which Level B harassment may occur.

Animals in the Project Area during the HRG survey are unlikely to incur TTS hearing impairment due to the characteristics of the sound sources, which include low source levels (208 to 221 dB re 1 µPa-m) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause temporary threshold shift and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the sub-bottom profiler and other HRG survey equipment makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel. Boebel *et al.* (2005) concluded similarly for single and multibeam echosounders; and, more recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible but that behavioral response cannot be ruled out. Animals may avoid the area around the survey vessels, thereby reducing exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

It is possible that animals in the Project Area may experience TTS during the use of DP vessel thrusters during the geotechnical survey due to the duration and nature of the noise (continuous, up to 75 days). However, the fact that the DP drill ship is stationary during the geotechnical survey activities makes it less likely that animals would remain in the area long enough to incur TTS. As is the case for the HRG survey activities, animals may avoid the area around the survey vessel, thereby reducing exposure. Any disturbance to marine mammals is more likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey (Tyack 2000). Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.,* 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Thompson, 1965; Myrberg, 1978; Chapman *et al.,* 1998; Desharnais *et al.,* 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.,* 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales, because of how far low-frequency sounds propagate.

Marine mammal communications would not likely be masked appreciably by the sub-profiler signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. And while continuous sound from the DP thruster when in use is predicted to extend 500 m to the 120 dB threshold, the generally short duration of DP thruster use and low source levels, coupled with the likelihood of animals to avoid the sound source, would result in very little opportunity for this activity to mask the communication of local marine mammals for more than a brief period of time.

Non-Auditory Physical Effects (Stress)

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Sapolsky *et al.,* 2005; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of

continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg 1987; Rivier 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle 1950) or ''allostatic loading'' (McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker 2000; Romano *et al.,* 2002; Wright *et al.,* 2008). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality.

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Behavioral Disturbance

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold 1996; Stone *et al.,* 2000; Morton and Symonds 2002; Gailey *et al.,* 2007). Longer-term displacement is

possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008) and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil 1997; Fritz *et al.,* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Marine mammals are likely to avoid the HRG survey activity, especially the naturally shy harbor porpoise, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers and other HRG survey equipment operate from a moving vessel, and the maximum radius to the 160 dB harassment threshold is less than 500 m, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, therefore reducing the likelihood of repeated HRG-related impacts within the survey area. And while the drill ship using DP thrusters will generally remain stationary during geotechnical survey activities, the short duration (up to 75 days) of the DP thruster use would likely result in only short-term and temporary avoidance of the area, rather than permanent abandonment, by marine mammals.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from DWW's use of HRG survey equipment, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many km. However, other

studies have shown that marine mammals at distances more than a few km away often show no apparent response to industrial activities of various types (Miller *et al.,* 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (*e.g.,* Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl 2000; Croll *et al.,* 2001; Jacobs and Terhune 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 mi (0.25–0.5 km). Due to the relatively high vessel traffic in the Lease Area it is possible that marine mammals are habituated to noise (*e.g.,* DP thrusters) from project vessels in the area.

Vessel Strike

Ship strikes of marine mammals can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.,* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical and geotechnical surveys. Marine mammals would be able to easily avoid the applicant's vessels due to the slow speeds and are likely already habituated to the presence of numerous vessels in the area. Further, DWW shall implement measures (*e.g.,* vessel speed restrictions and separation distances; see *Proposed Mitigation Measures*) set forth in the BOEM Lease to reduce the risk of a vessel strike to marine mammal species in the Lease Area.

There are no rookeries or mating grounds known to be biologically important to marine mammals within the proposed project area. However, this area is an important feeding area for fin whales and an important migratory route for North Atlantic right whales (Waring *et al.,* 2016). There is no designated critical habitat for any ESA-listed marine mammals. Critical habitat for North Atlantic right whales is a designated habitat that includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. This critical habitat was revised in 2006 to include two foraging areas in the North Pacific Ocean—one in the Bering Sea and one in the Gulf of Alaska (71 FR 38277, July 6, 2006); however, this is outside of the Project Area.

NMFS' regulations at 50 CFR part 224 designated the nearshore waters of the Mid-Atlantic Bight as the Mid-Atlantic U.S. Seasonal Management Area (SMA) for right whales in 2008. Mandatory vessel speed restrictions (less than 10 knots) are in place in that SMA from November 1 through April 30 to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds.

Bottom disturbance associated with the proposed survey activities may include vibracores, CPTs, and grab sampling to validate the seabed classification obtained from the multibeam echosounder/sidescan sonar data. Approximately 10 vibracores per day or 8 CPTs per day is expected, either one or the other (not both). Impact on marine mammal habitat from these activities will be temporary, insignificant, and discountable.

Because of the temporary nature of the disturbance, the availability of similar habitat and resources (*e.g.,* prey species) 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.

Estimated Take by Incidental Harassment

This section provides an estimate of the number of incidental takes proposed for authorization through this 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, 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 A and Level B harassment, in the form of disruption of behavioral patterns or PTS for individual marine mammals resulting from exposure to HRG and geotechnical surveys. Level A harassment is only proposed to be authorized for harbor porpoise, harbor seal, and gray seal during the use of the sparker systems. Based on the small Level A isopleths (Table 7) for all other sources and hearing groups, Level A harassment is not anticipated. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or proposed to be authorized for this

activity. Below we describe how the take is estimated for this project.

Project activities that have the potential to harass marine mammals, as defined by the MMPA, include underwater noise from operation of the HRG survey sub-bottom profilers and vibracores, and noise propagation associated with the use of DP thrusters during geotechnical survey activities that require the use of a DP drill ship. NMFS anticipates that impacts to marine mammals would be in the form of behavioral harassment potential PTS, and no take by serious injury or mortality is proposed.

The basis for the take estimate is the number of marine mammals that would be exposed to sound levels in excess of NMFS' Level B harassment criteria for impulsive noise (160 dB re 1 µPa (rms) and continuous noise (120 dB re 1 µPa (rms.)), which is generally determined by overlaying the area ensonified above NMFS acoustic thresholds for harassment within a day with the density of marine mammals, and multiplying by the number of days. NMFS' current acoustic thresholds for estimating take are shown in Table 4 below.

TABLE 4—NMFS'S ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level B harassment (underwater)	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

DWW took into consideration sound sources using the potential operational parameters, bathymetry, geoacoustic properties of the Project Area, time of year, and marine mammal hearing ranges. Results of a sound source verification study in a nearby location (xx) showed that estimated maximum distance to the 160 dB re 1 µPa (rms) MMPA threshold for all water depths for the HRG survey sub-bottom profilers (the HRG survey equipment with the greatest potential for effect on marine mammal) was approximately 447 m from the source, which equated to a propagation loss coefficient of 20logR (equivalent to spherical spreading). The estimated maximum critical distance to the 120 dB re 1 µPa (rms) MMPA threshold for all water depths for the vibracore was approximately 1,778 from the source using spherical spreading. For sparkers and vibracore, we doubled these distances to conservatively account for the uncertainty in predicting propagation loss in a similar but different location. The estimated maximum critical distance to the 120 dB re 1 µPa (rms) MMPA threshold for all water depths for the drill ship DP thruster was approximately 500 m from the source based on hydroacoustic modeling results (Subacoustech 2016). DWW and NMFS believe that these estimates represent the a conservative scenario and that the actual distances to the Level B harassment threshold may be shorter, as the calculated distance was doubled for the sparker system and vibracore, the SL for the sparker system was conservatively based on a source that was louder than the equipment proposed for use in this project, and there are some sound measurements taken in the Northeast that suggest a higher spreading coefficient (which would result in a shorter distance) may be applicable.

DWW estimated species densities within the proposed project area in order to estimate the number of marine mammal exposures to sound levels above the 120 dB Level B harassment threshold for continuous noise (*i.e.,* DP thrusters and vibracore) and the 160 dB Level B harassment threshold for intermittent, impulsive noise (*i.e.,* sparkers). Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would perceive the acoustic signals associated with the HRG survey equipment as being intermittent rather than continuous, and we base our takes from these sources on exposures to the 160 dB threshold.

The data used as the basis for estimating cetacean density (''D'') for the Lease Area are sightings per unit effort (SPUE) derived by Duke University (Roberts *et al.,* 2016). For pinnipeds, the only available comprehensive data for seal abundance is the Northeast Navy Operations Area (OPAREA) Density Estimates (DoN 2007). SPUE (or, the relative abundance of species) is derived by using a measure of survey effort and number of individual cetaceans sighted. SPUE allows for comparison between discrete units of time (*i.e.* seasons) and space within a project area (Shoop and Kenney, 1992). The Duke University (Roberts *et al.,* 2016) cetacean density data represent models derived from aggregating line-transect surveys conducted over 23 years by 5 institutions (NMFS Northeast Fisheries Science Center (NEFSC), New Jersey Department of Environmental Protection (NJDEP), NMFS Southeast Fisheries Science Center (SEFSC), University of North Carolina Wilmington (UNCW), Virginia Aquarium & Marine Science Center (VAMSC)), the results of which are freely available online at the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) repository. The datasets for each species were downloaded from OBIS–SEAMAP and were modeled as estimated mean year-round abundance (number of individual animals) per grid cell (100 km by 100 km) for most species. For certain species, the model predicted monthly mean abundance rather than mean year-round abundance, for which the annual mean abundance was calculated using Spatial Analyst tools in ArcGIS. Based on the annual mean abundance datasets, the mean density (animals/km^2) was calculated in ArcGIS by averaging the abundance of animals within the Project Area and dividing by 100 to get animals/km^2. The OPAREA Density Estimates (DoN 2007) used for pinniped densities were based on data collected through NMFS NWFSC aerial surveys conducted between 1998 and 2005.

The Zone of influence (ZOI) is the extent of the ensonified zone in a given day. The ZOI was calculated using the following equations:

- Stationary source (*e.g.* DP thruster and vibracore): πr^2
- Mobile source (*e.g.* sparkers): (distance/day * 2r) + πr^2

Where distance is the maximum survey trackline per day (110 km) and r is the distance to the 160 dB (for impulsive sources) and 120 dB (for non-impulsive sources) isopleths. The isopleths for sparkers and vibracores were calculated using spherical spreading, and the resulting isopleths were doubled as a conservative measure. The isopleths for the DP thruster was calculated using a

transmission loss coefficient of 11.12, which was based on field verification study results (Subacoustech 2016).

Estimated takes were calculated by multiplying the species density (animals per km²) by the appropriate ZOI, multiplied by the number of appropriate days (*e.g.* 168 for HRG activities or 75 days for geotechnical activities) of the specified activity. A detailed description of the acoustic modeling used to calculate zones of influence is provided in DWW's IHA application (also see the discussion in the *Mitigation* section below).

DWW used a distance to the 160 dB Level B threshold of 447 m, which was doubled to be conservative, for a maximum distance of 894 m for the sparker system. The ZOI of 199.048 km² for the sparker system and the survey period of a conservative 168 days, which includes estimated weather downtime, was used to estimate take from use of the HRG survey equipment during geophysical survey activities. The ZOI is based on the worst case (since it assumes the higher powered Dura-Spark 240 System sparker will be operating all the time) and a maximum survey trackline of 110 km (68 mi) per day. The resulting take estimates (rounded to the nearest whole number) are presented in Table 5.

DWW used a maximum distance to the 120 dB Level B threshold of 499 m for DP thrusters. The ZOI of 0.782 km² and the maximum DP thruster use period of 75 days were used to estimate take from use of the DP thruster during geotechnical survey activities.

DWW used a distance to the 120 dB Level B zone of 1,778 m, which was doubled to be conservative, for a maximum distance of 3,556 m for vibracore. The ZOI of 39.738 km² and a maximum vibracore use period of 75 days were used to estimate take from use of the vibracore during geotechnical survey activities. The resulting take estimates (rounded to the nearest whole number) based upon these conservative assumptions are presented in Table 5.

TABLE 5—ESTIMATED LEVEL B HARASSMENT TAKES FOR HRG AND GEOPHYSICAL SURVEY ACTIVITIES

Equipment	Density	HPC or Rossfelder Corer	DP thruster	Applied acoustics 100–1,000 joule Dura-Spark 240 system	Total number of takes
Sound Source (dB)		185	150	213 dB_{rms}	
Number of Activity Days		75	75	168	
Threshold		RMS 120 dB	RMS 120 dB	RMS 160 dB	
Species Common Name		Level B Take Estimate (multiplied by number of days)			
Odontoceti (Toothed Whales and Dolphins)					
Sperm whale	0.00007657	0	0	3	3
Dwarf sperm whale	0.0	0	0	0	0
Pygmy sperm whale	0.0	0	0	0	0
Killer Whale	0	0	0	0	0
Pygmy killer whale	0.00000895	0	0	0	0
False killer whale	0	0	0	3	3
Northern bottlenose whale	0.00007786	0	0	0	0
Cuvier's beaked whale	0.00018441	1	0	6	7
Mesoplodon beaked whales (True's, Gervais', Blainville's, and Sowerby's beaked whales)	0	0	0	0	0
Melon-headed whale	0	0	0	0	0
	0				
Risso's dolphin	0.00000221	0	0	0	0
Long-finned pilot whale	0.00149747	4	0	50	54
Short-finned pilot whale	0	0	0	0	0
Atlantic white-sided dolphin	0.01444053	43	1	483	527
White-beaked dolphin	0.00008411	0	0	3	3
Short-beaked common dolphin	0.04027238	120	2	1,347	.....
Atlantic spotted dolphin	0.00006577	0	0	2	2
Pantropical spotted dolphin	0	0	0	0	0
Striped dolphin	0.00003174	0	0	1	1
Fraser's dolphin	0	0	0	0	0
Rough toothed dolphin	0	0	0	0	0
Clymene dolphin	0	0	0	0	0
Spinner dolphin	0	0	0	0	0
Common bottlenose dolphin	0.0115608	34	1	387	42
Harbor Porpoise	0.03340904	100	2	1,117	1,219
Mysticeti (Baleen Whales)					
Fin whale	0.00207529	6	0	69	75
Sei whale	0.00008766	0	0	3	3
Minke whale	0.00046292	1	0	15	16
Blue whale	0.00000918	0	0	0	0
Humpback whale	0.0014806	4	0	50	54
North Atlantic right whale	0.00295075	9	0	99	108
Phocids (Seals)					
Harbor seal	0.313166136	933	18	10,472	11,423

TABLE 5—ESTIMATED LEVEL B HARASSMENT TAKES FOR HRG AND GEOPHYSICAL SURVEY ACTIVITIES—Continued

Equipment	Density	HPC or Rossfelder Corer	DP thruster	Applied acoustics 100–1,000 joule Dura-Spark 240 system	Total number of takes
Gray seal	0.036336364	108	2	1,215	1,325

DWW's requested take numbers are provided in Tables 7 and are also the number of takes NMFS is proposing to authorize. DWW's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Table 7 are the maximum number of animals that may be harassed during the HRG and geotechnical surveys (*i.e.,* DWW assumes that each exposure event is a different animal). These estimates do not account for prescribed mitigation measures that DWW would implement during the specified activities and the fact that shutdown/powerdown procedures shall be implemented if an animal enters within 200 m of the vessel during any activity, and within 400 m when the sparkers are operating, further reducing the potential for any takes to occur during these activities.

DWW used NMFS' Guidance (NMFS 2016) to determine sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by injury, in the form of PTS, might occur. The functional hearing groups and the associated PTS onset acoustic thresholds are indicated in Table 6 below.

TABLE 6—SUMMARY OF PTS ONSET ACOUSTIC THRESHOLDS [1]

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-frequency cetaceans	*Cell 1:* Lpk,flat: 219 dB; LE,LF,24h: 183 dB	*Cell 2:* LE,LF,24h: 199 dB.
Mid-frequency cetaceans	*Cell 3:* Lpk,flat: 230 dB; LE,MF,24h: 185 dB ...	*Cell 4:* LE,MF,24h: 198 dB.
High-frequency cetaceans	*Cell 5:* Lpk,flat: 202 dB; LE,HF,24h: 155 dB ...	*Cell 6:* LE,HF,24h: 173 dB.
Phocid Pinnipeds (underwaters)	*Cell 7:* Lpk,flat: 218 dB; LE,PW,24h: 185 dB ..	*Cell 8:* LE,PW,24h: 201 dB.
Otariid Pinnipeds (underwater)	*Cell 9:* Lpk,flat: 232 dB; LE,OW,24h: 203 dB ..	*Cell 10:* LE,OW,24h: 219 dB.

[1] NMFS 2016.

* 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.

DWW used the user spreadsheet to calculate the isopleth for the loudest sources (sparker, vibracore, DP thruster). The sparker was calculated with the following conditions: Source level of 186 dB SEL, source velocity of 1.93 meters per second (m/s), repetition rate of 2.48, and a weighting factor adjustment of 1.2 and 2.75 based on the appropriate broadband source. Isopleths were less than 1 m for all hearing groups (Table 7) except high-frequency cetaceans, which was 5.12 m. Level A takes are only requested for harbor porpoise, harbor seal, and gray seal (Table 8). The vibracore used the following parameters: Source level of 185 rms, distance of source level measurement at 1 m, duration of 1 hour, propagation loss of 20, and weighting factor adjustment of 1.7, 6.2, and 20 based on the spectrograms for this equipment. Isopleths are summarized in Table 7 and no Level A takes are requested during the use of the vibracore (Table 8). The DP thruster was defined as non-impulsive static continuous source with a source level of 150 dB rms, Propagation loss of 11.12 based on the spectrograms for this equipment (Subacoustech 2016), an activity duration of 1 and 3 hours and weighting factor adjustment of 1.7 and 5. Isopleths were less than 3 m for all hearing groups (Table 7); therefore, no Level A takes were requested for this source (Table 8).

TABLE 7—MAXIMUM WORST-CASE DISTANCE (m) AND AREA (km^2) TO THE LEVEL A AND LEVEL B THRESHOLDS

Hearing group	SELcum threshold (dB)	Equipment	Vibracore operations: HP Cor Rossfelder Corer			DP thruster		800 Joule geo resources sparker	Sparker system
		Source PLS	185 dB $_{RMS}$			150 dB $_{RMS}$		186 dB $_{SEL}$	186 dB $_{SEL}$
Level A									
	Threshold	WFA* (kHz)	1.7	6.2	20	1.7	5	2.75	1.2
Low-Frequency Cetaceans.	199	PTS Isopleth to threshold (meters).	11.97 m, 0 km^2.	.....	.....	0.06 m, 0 km^2	.....	1.29 m, 0.283 km^2.	1.30 m, 0.287 km^2.
Mid-Frequency Cetaceans.	198		.....	.....	12.96 m, 0.001 km^2.	.....	0.03 m, 0 km^2	0.02 m, 0.005 km^2.	
High-Frequency Cetaceans.	173		.....	.....	207.58 m, 0.135 km^2.	.....	2.17 m, 0 km^2	5.12 m, 1.127 km^2.	
Phocid Pinnipeds ...	201		.....	9.51 m, 0 km^2	.....	.....	0.11 m, 0 km^2	0.65 m, 0.144 km^2.	
Level B									
	Threshold	Source PLS	185 dB $_{RMS}$			150 dB $_{RMS}$		213 dB $_{RMS}$	213 dB $_{RMS,}$
All Marine Mammals.	120	Level B Harassment Distance.	3,556 m, 39.74 km^2			499 m, 0.78 km^2			
	160							893 m, 199.0481 km^2.	893 m, 199.0481 km^2.

* Weighting Factor Adjustment.

Estimated Level A takes for all geophysical and geotechnical activities are summarized in Table 8 below.

TABLE 8—ESTIMATED LEVEL A HARASSMENT TAKES FOR HRG AND GEOPHYSICAL SURVEY ACTIVITIES

Equipment	Density (animal/km^2)	HPC or Rossfelder Corer			DP thruster		Applied acoustics 100–1,000 joule Dura-Spark 240 system
Sound Source (dB)		185			150		186 dB_{SEL}
Weighting Factor Adjustment (kHz)		1.7	6.2	20	1.7	5	2.75
Number of Activity Days		75			75		168
Species Common Name		Take Estimate (multiplied by number of days and rounded to a whole number)					
Harbor Porpoise	0.03340904	.....	.....	0	.....	0	6
Harbor seal	0.313166136	.....	0	.....	.....	0	8
Gray seal	0.036336364	.....	0	.....	.....	0	1

Proposed Mitigation

Under section 101(a)(5)(D) of the MMPA, NMFS shall prescribe the permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

To ensure that the ''least practicable adverse impact'' will be achieved, NMFS evaluates mitigation measures in consideration of the following factors in relation to one another: 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, their habitat, and their availability for subsistence uses (latter where relevant); the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation.

Proposed Mitigation Measures

With NMFS' input during the application process, and as per the BOEM Lease, DWW is proposing the following mitigation measures during site characterization surveys utilizing HRG survey equipment and use of the DP thruster and vibracore. The mitigation measures outlined in this section are based on protocols and procedures that have been successfully

implemented and resulted in no observed take of marine mammals for similar offshore projects and previously approved by NMFS (ESS 2013; Dominion 2013 and 2014).

Marine Mammal Exclusion Zones

Protected species observers (PSOs) will monitor the following exclusion/monitoring zones for the presence of marine mammals:

- A 200-m exclusion zone during all geophysical and geotechnical operations
- A 400-m exclusion zone during the use of sparkers.

These exclusion zones are exclusion zone specified in stipulations of the OCS–A 0486 Lease Agreement.

Visual Monitoring

Visual monitoring of the established exclusion zone(s) s will be performed by qualified and NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Observer qualifications will include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators (PAM operators will not function as PSOs), operating in shifts, will be stationed aboard the survey vessel. PSOs and PAM operators will work in shifts such that no one monitor will work more than 4 consecutive hours without a 2-hour break or longer than 12 hours during any 24-hour period. Each PSO will monitor 360 degrees of the field of vision.

PSOs will be responsible for visually monitoring and identifying marine mammals approaching or within the established exclusion zone(s) during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PAM operators will communicate detected vocalizations to the Lead PSO on duty, who will then be responsible for implementing the necessary mitigation procedures.

PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared technology will be used. Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting.

The PSOs will begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment will not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes, as per the requirements of the BOEM Lease.

If a marine mammal is detected approaching or entering the 200-m or 400-m exclusion zones, the vessel operator would adhere to the shutdown (during HRG survey) or powerdown (during DP thruster use) procedures described below to minimize noise impacts on the animals.

At all times, the vessel operator will maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below. These stated requirements will be included in the site-specific training to be provided to the survey team.

Passive Acoustic Monitoring

As per the BOEM Lease, alternative monitoring technologies (*e.g.,* active or passive acoustic monitoring) are required if a Lessee intends to conduct geophysical surveys at night or when visual observation is otherwise impaired. To support 24-hour HRG survey operations, DWW will include PAM as part of the project monitoring during nighttime operations to provide for optimal acquisition of species detections at night.

Given the range of species that could occur in the Project Area, the PAM system will consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). The PAM operator(s) will monitor the hydrophone signals for detection of marine mammals in real time both aurally (using headphones) and visually (via the monitor screen displays). PAM operators will communicate detections to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation measure.

Vessel Strike Avoidance

DWW will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators will comply with 10 knot (<18.5 km per hour [km/h]) speed restrictions in any Dynamic Management Area (DMA).
- All survey vessels will maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sited in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels will maintain a separation distance of 100 m or greater from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetaceans. If sighted, the vessel underway must reduce speed and shift the engine to neutral and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.
- All vessels will maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway will remain parallel to a sighted delphinoid cetacean's course whenever possible and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam (*i.e.,* moving away and at a right angle to the centerline of the vessel) of the underway vessel.

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

The training program will be provided to NMFS for review and approval prior to the start of surveys. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

Seasonal Operating Requirements

Between watch shifts, members of the monitoring team will consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The proposed survey activities will, however, occur outside of the seasonal management area (SMA) located off the coasts of Delaware and New Jersey. The proposed survey activities will also occur in June/July and September, which is outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30).

Throughout all survey operations, DWW will monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA, DWW will work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

Ramp-Up

As per the BOEM Lease, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. A ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Project Area by allowing them to vacate the area prior to the commencement of survey equipment use. The ramp-up procedure will not be initiated during daytime, nighttime, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up would begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power would then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If marine mammals are detected within the HRG survey exclusion zone prior to or during the ramp-up, activities will be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are detected for a period of 60 minutes.

The DP vessel thrusters will be engaged from the time the vessel leaves the dock to support the safe operation of the vessel and crew while conducting geotechnical survey activities and require use as necessary. Therefore, there is no opportunity to engage in a ramp-up procedure.

Shutdown and Powerdown

HRG Survey—The exclusion zone(s) around the noise-producing activities (HRG and geotechnical survey equipment) will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement should be discussed only after shutdown.

As per the BOEM Lease, if a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established exclusion zone (200-m exclusion zone during HRG surveys; 400-m exclusion zone during the operation of the sparker), an immediate shutdown of the survey equipment is required. Subsequent restart of the survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes.

As per the BOEM Lease, if a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment (including the sub-bottom profiler) must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment.

If the HRG sound source (including the sub-bottom profiler) shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 60 minutes.

Geotechnical Survey (DP Thrusters)—During geotechnical survey activities, a constant position over the drill, coring, or CPT site must be maintained to ensure the integrity of the survey equipment. During DP vessel operations if marine mammals enter or approach the established exclusion zone, DWW proposes to reduce DP thruster to the maximum extent possible, except under circumstances when ceasing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the Project. Reducing thruster energy will effectively reduce the potential for exposure of marine mammals to sound energy. Normal use may resume when PSOs report that the monitoring zone has remained clear of marine mammals for a minimum of 60 minutes since last the sighting.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations (ITAs) 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 measures prescribed by NMFS should contribute to improved understanding of one or more of the following general goals:

- Occurrence of marine mammal species or stocks in the action area (*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.

Proposed Monitoring Measures

DWW submitted marine mammal monitoring and reporting measures as part of the IHA application. These measures may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Monitoring—Visual monitoring of the established Level B harassment zones (200-m radius during all HRG and geotechnical surveys (note that this is the same as the mitigation exclusion/shutdown zones established for HRG and geotechnical survey sound sources); 400-m radius during use of the sparker system (note that this is the same as the exclusion zone established for sparker use) will be performed by qualified and NMFS-approved PSOs (see discussion of PSO qualifications and requirements in *Marine Mammal Exclusion Zones* above).

The PSOs will begin observation of the monitoring zone during all HRG survey activities and all geotechnical operations where DP thrusters are employed. Observations of the monitoring zone will continue throughout the survey activity and/or while DP thrusters are in use. PSOs will be responsible for visually monitoring and identifying marine mammals approaching or entering the established monitoring zone during survey activities.

Observations will take place from the highest available vantage point on the survey vessel. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSO will occur when alerted of a marine mammal presence.

Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of construction operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification (if known), numbers, behavior); and details of any observed ''taking'' (behavioral disturbances or injury/mortality). The data sheet will be provided to both NMFS and BOEM for review and approval prior to the start of survey activities. In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. A briefing will also be conducted between the survey supervisors and crews, the PSOs, and DWW. The purpose of the briefing will be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

Acoustic Field Verification—As per the requirements of the BOEM Lease, field verification of the exclusion/monitoring zones will be conducted to determine whether the proposed zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The details of the field verification strategy will be provided in a Field Verification Plan no later than 45 days prior to the commencement of field verification activities.

DWW must conduct field verification of the exclusion zone (the 160 dB isopleth) for HRG survey equipment and the exclusion zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. DWW must take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 160 dB isopleths (the B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements must be taken at the reference locations at two depths (*i.e.,* a depth at mid-water and a depth at approximately 1 meter (3.28 ft) above the seafloor).

DWW may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by DWW must be based on the most conservative measurements (*i.e.,* the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone must be used for all subsequent use of field-verified equipment. DWW must obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented, and the IHA shall be modified accordingly.

Proposed Reporting Measures

DWW will provide the following reports as necessary during survey activities:

- The Applicant will contact NMFS and BOEM within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.
- As per the BOEM Lease: Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals must be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species are reported to the NMFS Greater Atlantic Regional Fisheries Office (GARFO) Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, DWW must ensure that NMFS and BOEM are notified of the strike within 24 hours. DWW must use the form included as Appendix A to Addendum C of the Lease to report the sighting or incident. Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).
- *Notification of Injured or Dead Marine Mammals*—In the unanticipated

event that the specified HRG and geotechnical activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), DWW would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NOAA GARFO Stranding Coordinator. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. NMFS would work with DWW to minimize reoccurrence of such an event in the future. DWW would not resume activities until notified by NMFS.

In the event that DWW discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), DWW would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the GARFO Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with DWW to determine if modifications in the activities are appropriate.

In the event that DWW discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), DWW would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, and the GARFO Regional Stranding Coordinator, within 24 hours of the discovery. DWW would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. DWW can continue its operations under such a case.

- Within 90 days after completion of the marine site characterization survey activities, a technical report will be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.
- In addition to the Applicant's reporting requirements outlined above, DWW will provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.* visual observations during day and night, compared to the PAM detections/operations. This will be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

Negligible Impact Analysis and Determinations

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. 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 the authorized 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, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. Consistent with the 1989 preamble for the NMFS implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As discussed in the *Potential Effects* section, PTS, masking, non-auditory physical effects, and vessel strike are not expected to occur. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated impacts within the project area.

Potential impacts to marine mammal habitat were discussed previously in this document (see the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section). Marine mammal habitat may be impacted by elevated sound levels and some sediment disturbance, but these impacts would be temporary. Feeding behavior is less 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). Additionally, 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, and the availability of similar habitat and resources in the surrounding area, 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. Furthermore, there are no rookeries or mating grounds known to be biologically important to marine mammals within the proposed project area. A biologically important feeding area for fin whales East of Montauk Point (from March to October) and a biologically important migratory route effective March–April and November–December for North Atlantic right whale, occur near the Project Area (LaBrecque, *et al.,* 2015). However, there is only a small temporal overlap between the migratory biologically important area (BIA) and the proposed survey activities in November and December.

ESA-listed species for which takes are proposed are North Atlantic right, sperm, sei and fin whales. Recent estimates of abundance indicate a potential declining right whale

population; however, this may also be due to low sighting rates in areas where right whales were present in previous years, due to a shift in habitat use patterns (Waring *et al.,* 2016). There are currently insufficient data to determine population trends for fin whale, sei whale, and sperm whale (Waring *et al.,* 2015). There is no designated critical habitat for any ESA-listed marine mammals within the Project Area, and most of the stocks for non-listed species proposed to be taken are not considered depleted or strategic by NMFS under the MMPA. Of the two non-listed species that are considered strategic for which take is requested (false killer whale and long-finned pilot whale), take is less than one percent of the entire populations; therefore, the proposed site characterization surveys will not have population-level effects, and we do not expect them to impact annual rates of recruitment or survival.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy; (2) reducing the intensity of exposure within a certain distance by reducing the DP thruster power; and (3) preventing animals from being exposed to sound levels that may cause injury. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the Study Area.

DWW did not request, and NMFS is not proposing, take of marine mammals by serious injury or mortality. NMFS expects that most takes would be in the form of a very small number of potential PTS takes, which would be expected to be of a small degree, and short-term Level B behavioral harassment in the form of brief startling reaction and/or 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). This is largely due to the short time scale of the proposed activities, the low source levels and intermittent nature of many of the technologies proposed to be used, as well as the required mitigation.

NMFS concludes that exposures to marine mammal species and stocks due to DWW's HRG and geotechnical survey activities would result in only short-term and relatively infrequent effects to individuals exposed and not of the type or severity that would be expected to be additive for the small portion of the stocks and species likely to be exposed. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival, because although animals may temporarily avoid the immediate area, they are not expected to permanently abandon the area. Additionally, major shifts in habitat use, distribution, or foraging success, are not expected.

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, NMFS compares the number of individuals taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals.

TABLE 9—SUMMARY OF POTENTIAL MARINE MAMMAL TAKES AND PERCENTAGE OF STOCKS AFFECTED

Species	Requested Level B take authorization (no.)	Requested Level A take authorization (no.)	Stock abundance estimate	Percentage of stock potentially affected
North Atlantic right whale (Eubalaena glacialis)	108	0	440	24.55
Fin Whale (*Balaenoptera physalus*)	75	0	1,618	4.64
Sei whale (*Balaenoptera borealis*)	3	0	357	0.84
Humpback whale (*Megaptera novaeangliae*)	54	0	823	6.56
Minke whale (*Balaenoptera acutorostrata*)	16	0	2,591	0.62
Sperm whale (Physeter macrocephalus)	3	0	2,288	0.13
False killer whale (*Pseudorca crassidens*)	3	0	442	0.68
Cuvier's beaked whale (*Ziphius cavirostris*)	7	0	6,532	0.11
Long-finned pilot whale (*Globicephala melas*)	54	0	5,636	0.96
Atlantic white-sided dolphin (*Lagenorhynchus acutus*)	527	0	48,819	1.08
White-beaked dolphin (*Lagenorhynhcus albirostris*)	3	0	2,003	0.15
Short beaked common Dolphin (*Delphinus delphis*)	1,469	0	70,184	2.09
Atlantic spotted dolphin (*Stenella frontalis*)	2	0	44,715	0.0045
Striped dolphin (*Stenella coruleoalba*)	1	0	54,807	0.0018
Bottlenose Dolphin (*Tursiops truncatus*)	422	0	77,532	0.54
Harbor Porpoise (*Phocoena phocoena*)	1219	6	79,883	1.53
Harbor Seal[1] *(Phoca vitulina)*	11,423	8	75,834	15.07
Gray seal (*Halichoerus grypus*)	1325	1	505,000	0.26

The requested takes proposed to be authorized for the HRG and geotechnical surveys represent less than one percent for 11 stocks (sei whale, minke whale, sperm whale, false killer whale, Cuvier's beaked whale, long-finned pilot whale, white-beaked dolphin, Atlantic spotted dolphin, striped dolphin, bottlenose dolphin, and gray seal); 1.08 percent for Atlantic white-sided dolphin; 1.53 percent for harbor porpoise; 2.09 percent for short-beaked common dolphin; 4.64 percent for fin whale; 6.56 percent for humpback whale; and 15.07 percent for harbor seal (Table 9). Just under 25 percent of the North Atlantic right whale stock has calculated take proposed; however, this is for the entire duration of the project activities (mid-June through December), and while this stock of right whales may be present in very low numbers in the winter months (November and December) in this area,

most animals have moved off the feeding grounds and have moved to the breeding grounds during this time. We do not expect a large number of right whales to be in the area for nearly one third of the project duration. Only repeated takes of some individuals are likely and this is an overestimate of the number of individual right whales that may actually be impacted by project activities. However, we analyzed the potential for take of 25% of the individual right whales in the context of the anticipated effects described previously.

These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and are small numbers relative to the affected species or stock sizes. Further, the proposed take numbers represent the instances of take and are the maximum numbers of individual animals that are expected to be harassed during the project; it is possible that some exposures may occur to the same individual.

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

Issuance of an MMPA authorization requires compliance with the ESA. Within the project area, fin, humpback, and North Atlantic right whale are listed as endangered under the ESA. Under section 7 of the ESA, BOEM consulted with NMFS on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NOAA's GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of fin whale, humpback whale, or North Atlantic right whale. The Biological Opinion can be found online at *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm*. NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Following issuance of the DWW's IHA, the Biological Opinion may be amended to include an incidental take exemption for these marine mammal species, as appropriate.

National Environmental Policy Act (NEPA)

NMFS is preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The EA will be posted at *http://www.nmfs.noaa.gov/pr/permits/incidental/energy_other.htm* once it is finalized.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to DWW for conducting HRG survey activities and use of a vibracore system and DP vessel thrusters during geotechnical survey activities from June 2017 through May 2018, 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).

Deepwater Wind, LLC (DWW) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to harass marine mammals incidental to high-resolution geophysical (HRG) and geotechnical survey investigations associated with marine site characterization activities off the coast of New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0486) (the Lease Area) and along potential submarine cable routes to a landfall location in Easthampton, New York (Submarine Cable Corridor) (collectively, the Lease Area and Submarine Cable Corridor are the Project Area).

1. This Authorization is valid from June 15, 2017, through June 14, 2018.

2. This Authorization is valid only for HRG and geotechnical survey investigations associated with marine site characterization activities as described in the Incidental Harassment Authorization (IHA) application.

3. The holder of this authorization (Holder) is hereby authorized to take the species listed in Table 1 incidental to HRG and geotechnical survey activities using sub-bottom profilers, vibracores, and dynamic positioning (DP) vessel thruster use during geotechnical activities.

4. The taking of any marine mammal in a manner prohibited under this IHA must be reported immediately to NMFS Greater Atlantic Regional Fisheries Office (GARFO), and NMFS Office of Protected Resources.

5. The Holder or designees must notify NMFS' GARFO and Office of Protected Resources at least 24 hours prior to the seasonal commencement of the specified activity.

6. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, or her designee at least 24 hours prior to the start of survey activities (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible) at 301–427–8401 or to *laura.mccue@noaa.gov.*

7. Mitigation Requirements: The Holder is required to abide by the following mitigation conditions listed in 7(a)–(f). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *Marine Mammal Exclusion Zones:* Protected species observers (PSOs) shall monitor the following zones for the presence of marine mammals:

- A 200-m exclusion zone during HRG surveys is in operation.
- A 400-m monitoring zone during the use of sparker systems.
- At all times, the vessel operator shall maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below.

Visual monitoring of the established exclusion zone(s) shall be performed by qualified and NMFS-approved protected species observers (PSOs). An observer team comprising a minimum of four NMFS-approved PSOs and two certified Passive Acoustic Monitoring (PAM) operators, operating in shifts, shall be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs shall be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared

video monitoring shall be used. The PSOs shall begin observation of the exclusion zone(s) at least 60 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment shall not begin until the exclusion zone is clear of all marine mammals for at least 60 minutes. If a marine mammal is seen approaching or entering the 200-m or 400-m exclusion zones, the vessel operator shall adhere to the shutdown/powerdown procedures described below to minimize noise impacts on the animals.

(b) *Ramp-Up:* A ramp-up procedure shall be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. The ramp-up procedure shall not be initiated during daytime, nighttime, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 60-minute period. A ramp-up shall begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power shall then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If a marine mammal is sighted within the HRG survey exclusion zone prior to or during the ramp-up, activities shall be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are sighted for a period of 60 minutes.

(c) *Shutdown and Powerdown HRG Survey*—The exclusion zone(s) around the noise-producing activities HRG survey equipment will be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after any noise-producing activity. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. If a non-delphinoid cetacean (*i.e.,* mysticetes and sperm whales) is detected at or within the established exclusion zone (200-m exclusion zone during HRG surveys; 400-m exclusion zone during use of the sparker system), an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 60 minutes. If a delphinoid cetacean or pinniped is detected at or within the exclusion zone, the HRG survey equipment must be powered down to the lowest power output that is technically feasible. Subsequent power up of the survey equipment must use the ramp-up procedures described above and may occur after (1) the exclusion zone is clear of a delphinoid cetacean and/or pinniped for 60 minutes or (2) a determination by the PSO after a minimum of 10 minutes of observation that the delphinoid cetacean or pinniped is approaching the vessel or towed equipment at a speed and vector that indicates voluntary approach to bow-ride or chase towed equipment. If the HRG sound source shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans and pinnipeds for 60 minutes. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 60 minutes.

Geotechnical Survey (DP Thrusters)—During geotechnical survey activities if marine mammals enter or approach the established 120 dB isopleth monitoring zone, DWW shall reduce DP thruster to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the equipment. After decreasing thruster energy, PSOs shall continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source then DP thruster use shall remain at the reduced level. Normal use shall resume when PSOs report that the marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 60 minutes since the last sighting.

(d) *Vessel Strike Avoidance:* The Holder shall ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these protected species. Survey vessel crew members responsible for navigation duties shall receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures shall include the following, except under extraordinary circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators shall comply with 10 knot (<18.5 km per hour (km/h)) speed restrictions in any Dynamic Management Area (DMA). In addition, all vessels operating from November 1 through July 31 shall operate at speeds of 10 knots (<18.5 km/h) or less.
- All survey vessels shall maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale.
- If underway, vessels must steer a course away from any sited North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 500 m minimum separation distance has been established. If a North Atlantic right whale is sited in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines shall not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m.
- All vessels shall maintain a separation distance of 100 m or greater from any sighted non-delphinoid cetacean (*i.e.,* mysticetes and sperm whales). If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel shall not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m.
- All vessels shall maintain a separation distance of 50 m or greater from any sighted delphinoid cetacean. Any vessel underway shall remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway shall reduce vessel speed to 10 knots or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or abeam of the underway vessel.

• All vessels shall maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

(e) *Seasonal Operating Requirements:* Between watch shifts members of the monitoring team shall consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. The proposed survey activities shall occur outside of the seasonal management area (SMA) located off the coast of New Jersey and Delaware and outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30). Throughout all survey operations, the Holder shall monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Lease Area under survey, within 24 hours of the establishment of the DMA the Holder shall work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

(f) *Passive Acoustic Monitoring:* To support 24-hour survey operations, the Holder shall include PAM as part of the project monitoring during the geophysical survey during nighttime operations, or as needed during periods when visual observations may be impaired.

The PAM system shall consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). The PAM operator(s) shall monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). PAM operators shall communicate detections/vocalizations to the Lead PSO on duty who shall ensure the implementation of the appropriate mitigation measure.

8. Monitoring Requirements: The Holder is required to abide by the following monitoring conditions listed in 8(a)–(b). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *Visual Monitoring*—Protected species observers (refer to the PSO qualifications and requirements for *Marine Mammal Exclusion Zones* above) shall visually monitor the established Level B harassment zones (400-m radius during sparker use and 200-m radius during all other HRG and geotechnical surveys). The observers shall be stationed on the highest available vantage point on the associated operating platform. PSOs shall estimate distance to marine mammals visually, using laser range finders or by using reticulated binoculars during daylight hours. During night operations, PSOs shall use night-vision binoculars and infrared technology. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of survey operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification (if known), numbers, behavior); and details of any observed ''taking'' (behavioral disturbances or injury/mortality). In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals

(b) *Acoustic Field Verification*—Field verification of the exclusion/monitoring zones shall be conducted to determine whether the proposed zones correspond accurately to the relevant isopleths and are adequate to minimize impacts to marine mammals. The Holder shall conduct field verification of the exclusion/monitoring zone (the 160 dB isolpleth) for HRG survey equipment and the monitoring/powerdown zone (the 120 dB isopleth) for DP thruster use for all equipment operating below 200 kHz. The Holder shall take acoustic measurements at a minimum of two reference locations and in a manner that is sufficient to establish source level (peak at 1 meter) and distance to the 160 dB isopleths (the B harassment zones for HRG surveys) and 120 dB isopleth (the Level B harassment zone) for DP thruster use. Sound measurements shall be taken at the reference locations at two depths (*i.e.,* a depth at mid-water and a depth at approximately 1 meter (3.28 ft) above the seafloor). The Holder may use the results from its field-verification efforts to request modification of the exclusion/monitoring zones for the HRG or geotechnical surveys. Any new exclusion/monitoring zone radius proposed by the Holder shall be based on the most conservative measurements (*i.e.,* the largest safety zone configuration) of the target Level A or Level B harassment acoustic threshold zones. The modified zone shall be used for all subsequent use of field-verified equipment. The Holder shall obtain approval from NMFS and BOEM of any new exclusion/monitoring zone before it may be implemented and the IHA shall be modified accordingly.

9. Reporting Requirements: The Holder shall provide the following reports as necessary during survey activities:

(a) The Holder shall contact NMFS (301–427–8401) and BOEM (703–787–1300) within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.

(b) Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals shall be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species shall be reported to the NMFS GARFO Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury of death was caused by a collision with a project related vessel, the Holder shall ensure that NMFS and BOEM are notified of the strike within 24 hours. The Holder shall use the form included as Appendix A to Addendum C of the Lease to report the sighting or incident. If the Holder is responsible for the injury or death, the vessel must assist with any salvage effort as requested by NMFS.

Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).

(c) *Notification of Injured or Dead Marine Mammals*

(i) In the unanticipated event that the specified HRG and geotechnical survey activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), the Holder shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, 301–427–8401, and the NOAA GARFO Stranding Coordinator, 978–281–9300. The report shall include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Name and type of vessel involved;

• Vessel's speed during and leading up to the incident;

• Description of the incident;

• Status of all sound source use in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the

circumstances of the event. NMFS would work with the Holder to minimize reoccurrence of such an event in the future. The Holder shall not resume activities until notified by NMFS.

(ii) In the event that the Holder discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), the Holder shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, 301–427–8401, and the GARFO Stranding Coordinator, 978–281–9300. The report shall include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the Holder to determine if modifications in the activities are appropriate.

(iii) In the event that the Holder discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Holder shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, 301–427–8401, and the NMFS GARFO Regional Stranding Coordinator, 978–281–9300, within 24 hours of the discovery. The Holder shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting.

(d) Within 90 days after completion of the marine site characterization survey activities, a technical report shall be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS shall be addressed in the final report prior to acceptance by NMFS.

(e) In addition to the Holder's reporting requirements outlined above, the Holder shall provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.* visual observations during day and night, compared to the PAM detections/operations. This shall be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG and geotechnical surveys and as a final version 60 days after completion of the surveys.

10. 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.

11. A copy of this Authorization and the Incidental Take Statement must be in the possession of each vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

12. The Holder is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

TABLE 1—SPECIES FOR WHICH TAKE IS PROPOSED TO BE AUTHORIZED

Species	Requested Level B take authorization (no.)	Requested Level A take authorization (no.)	Percentage of stock potentially affected
North Atlantic right whale (Eubalaena glacialis)	108	0	24.55
Fin Whale (*Balaenoptera physalus*)	75	0	4.64
Sei whale	3	0	0.84
Humpback whale (*Megaptera novaeangliae*)	54	0	6.56
Minke whale	16	0	0.62
Sperm whale (Physeter macrocephalus)	3	0	0.13
False killer whale (Pseudorca crassidens)	3	0	0.68
Cuvier's beaked whale	7	0	0.11
Long-finned pilot whale (Globicephala melas)	54	0	0.96
Atlantic white-sided dolphin	527	0	1.08
White-beaked dolphin	3	0	0.15
Short beaked common Dolphin (*Delphinus delphis*)	1,469	0	2.09
Atlantic spotted dolphin (Stenella frontalis)	2	0	0.0045
Striped dolphin (Stenella coruleoalba)	1	0	0.0018
Bottlenose Dolphin (*Tursiops truncatus*)	422	0	0.54
Harbor Porpoise (*Phocoena phocoena*)	1219	6	1.53
Harbor Seal [1] *(Phoca vitulina)*	11,423	8	15.07
Gray seal (*Halichoerus grypus*)	1325	1	0.27

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for DWW's proposed HRG and geotechnical survey investigations associated with marine site characterization activities off the coast of New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0486) and along potential submarine cable routes to a landfall location in Easthampton, New York. Please include with your comments any supporting data or literature citations to help inform our final decision on DWW's request for an MMPA authorization.

Dated: May 9, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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